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JAMES H. McKENNEY

IN THE

Supreme Court of the United States,

(No. 225.)

OCTOBER TERM, A. D. 1880.

THE GERMAN NATIONAL BANK OF CHICAGO,
Appellant,
vs.
MARK KIMBALL,
Collector of the Town of South Chicago, and
SAMUEL H. McCREA,
Treasurer, etc.,
Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

BRIEF FOR APPELLANT.

D. K. TENNEY - - J. M. FLOWER,

COUNSEL FOR APPELLANT.

CHICAGO:
HORACE O'DONOGHUE, LEGAL PRINTER, 42 BRYAN BLOCK, 170 LA SALLE STREET.
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ABSTRACT OF CASE.

This suit was commenced in the Circuit Court for the Northern District of Illinois, on the 16th day of February, A. D. 1878, by the German National Bank of Chicago, against Mark Kimball, then collector of the town of South Chicago, to enjoin him, as such collector, from attempting to collect certain pretended taxes, purporting to have been levied for the year 1877 upon the stockholders of said bank, and to vacate and set aside said taxes as illegal and wholly unauthorized and void.

A supplementary bill making Samuel H. McCrea, treasurer and *ex officio* collector of the County of Cook, in which the said town of South Chicago is situated, a party defendant to this suit, was subsequently filed, for reasons which sufficiently appear in the record. (*Transcript, p. 14.*)

The defendants filed a general demurrer to the bill of complaint, which was sustained by the court, and a decree was thereupon entered dismissing the bill for want of equity, and the complainant took an appeal therefrom to this court.

All the allegations of the bill are admitted by the demurrer, and the facts upon which the appellant's right to the relief prayed for is based, are perhaps as concisely stated in the printed transcript as it is possible to state them intelligibly. We shall not attempt, therefore, to restate them.

The main question involved in the case is the validity of the personal property taxes in the town of South Chicago for the year 1877, and the discussion of that question, aside from certain collateral questions, which we shall hereafter refer to, raises the following general propositions, to wit:

1. One-sixth of the entire personal property tax of the town of South Chicago, including the taxes against the shareholders of the German National Bank, are illegal and void, because the assessment upon which they are based was increased to that extent without warrant or authority of law.

2. All taxes levied upon shares of stock of National banks, including the German National Bank, for the year 1877, in the town of South Chicago, are fraudulent and void, because they were intentionally assessed at a greater rate than other moneyed capital in the hands of individuals.

3. All taxes upon personal property in the town of South Chicago for the year 1877, are illegal and void, because the assessment upon which the same are based was made in classes, upon different standards of value, instead of a uniform standard, so as to make each individual pay a tax in proportion to the respective or relative value of his property; because one-half of the personal property therein situated was fraudulently omitted from the assessment roll and wholly escaped taxation, and because none of said property was assessed at its fair cash value.

ASSIGNMENT OF ERRORS.

1. The court erred in its order sustaining the demurrer to the bill of complaint.

2. The court erred in its decree dismissing the complainant's bill for want of equity.

BRIEF AND ARGUMENT.

In presenting to this court a case involving the validity of taxes, we fully realize the reluctance with which courts, and more especially Federal courts, entertain jurisdiction of that class of suits. We appreciate the hesitation of courts of equity in interfering with the processes and rules laid down by State Legislatures for the assessment and collection of taxes, and for providing a revenue for the maintenance of government for the public benefit. We are fully aware of the fact that it has frequently been determined by this and other courts, that an injunction will not lie to restrain the collection of taxes for mere illegality or irregularity in the proceeding by which a tax is levied; nor error or excess in valuation, nor injustice of the law provided it be constitutional, nor any grievance which can be remedied by a suit at law. Able counsel throughout the country have for years exercised all their legal skill in behalf of wealthy individuals and corporations in devising schemes and raising legal and technical points to defeat the collection of the public revenue and to relieve their clients from the burdens of taxation; but the courts have uniformly held, so that it may now be regarded as a settled principle of equity jurisprudence, that the collection of taxes will not be restrained, unless some constitutional provision has been violated, or some positive statutory rule enacted for the protection of the tax payer has been willfully disregarded, or fraud has occurred, or an assessment has been made without legal authority.

We believe that the taxes in controversy in this suit are based upon an assessment made in violation of every constitutional and statutory rule in force in the State of Illinois; an assessment made without legal authority; an assessment which is a fraud upon the taxpayer, the public and the law itself.

So believing, we have had the courage to bring to this court a suit involving serious questions affecting the collection of the public revenue, and to ask at its hands a patient and careful consideration thereof.

I.

The right of a National bank to file a bill in equity as the trustee of and in behalf of its stockholders, seems to be well settled by numerous decisions, both of the State and Federal courts.

We cite the following authorities:

First National Bank of Mendota v. *Smith*, 65 Ill. 44.

Baker, County Treas., etc., v. *First National Bank of Springfield*, 67 Ill. 297.

First National Bank of Shawneetown v. *Cook, et al.*, 77 Ill. 622.

Union National Bank v. *City of Chicago*, 3 Biss. 82.

First National Bank of Omaha v. *County of Douglas et al.*, 3 Dillon, 297.

Merchants' National Bank of Toledo v. *Cummings*, U. S. C. C., N. Dist. of Ohio.

Cummings v. *Merchants' National Bank*, and *Pelton* v. *Commercial National Bank*, U. S. Supreme Court (unreported).

II.

Courts of equity will entertain jurisdiction of a suit brought to restrain the collection of personal property taxes, whenever the facts stated will justify it.

Various grounds have been assigned by the different courts, both State and Federal, for entertaining such jurisdiction.

In the case of the *Union National Bank* v. *City of Chicago*, 3 Biss. 82, upon the ground that a multiplicity of suits would thereby be avoided.

In *First Nat'l Bk. of Omaha* v. *County of Douglas et al.*, 3 Dillon, 297, upon the ground that no remedy existed to recover back illegal State taxes when paid into the State treasury.

In Illinois by numerous decisions, wherever fraud has occurred, or the assessment has been made without legal authority, or in classes, *or upon a wrong basis in violation of the statute and the Constitution.*

Creole v. *City of Chicago*, 56 Ill. 423.
Southeim v. *Same*, 56 Id. 429.
Spencer v. *People*, 68 Id. 510.
First Nat'l Bk. of Shawneetown v. *Cook*, 77 Id. 622.
Drake v. *Phillips*, 40 Ill. 388.
Vieley v. *Thompson*, 44 Ill. 9.
McConkey v. *Smith*, 73 Ill. 313.
Lee v. *Ruggles*, 62 Ill. 427.

Upon the admitted facts as shown by the complainant's bill, this case clearly falls within the jurisdiction of a court of equity upon nearly all the grounds above stated.

It avoids a multiplicity of suits; no remedy is provided for the recovery from the State for taxes illegally assessed and paid into its treasury; the assessment was willfully and fraudulently made upon a wrong basis, in violation of the statutes and Constitution of the State of Illinois; it was made in classes, and a portion of it was made without legal authority.

It seems to us that no clearer case could be presented for relief in a court of equity, than is made by the bill.

As to the right of the complainant to sue in the courts of the United States, there can be no question, and we apprehend that there can be but little doubt, under the authorities, of its right to maintain a suit in behalf of its stockholders, to restrain the collection of taxes illegally levied upon shares of stock held by them.

III.

One-sixth of the personal property taxes levied and assessed in the town of South Chicago, for the year 1877, including the taxes in controversy, are illegal and void, because the assessment upon which they are based was increased to that extent without authority of law. This has been judicially settled and determined by the Supreme Court of the State of Illinois in the case of *Kimball* v. *Merchants' Savings, Loan and Trust Company*, 89 Ill. p. 611.

It appears from the allegations of the bill in this case, that the shares of stock in the German National Bank were originally assessed at 34 per cent. of the par value of each share, amounting in the aggregate to one hundred and seventy thousand dollars. (*Printed transcript, fol. 10.*)

That the State Board of Equalization for Illinois, in equalizing assessments, directed and required that 57 per cent. should be added to the assessed valuation of personal property in Cook County, in which county the said town of South Chicago is situated. (*Printed abstract, fol. 22.*)

That to said original assessed valuation as returned by the assessor, the county clerk of Cook County, arbitrarily and without authority of law, added 20 per cent.; and to the aggregate of said sums added the additional 57 per cent., which the State Board directed to be added to the original assessment only, being an illegal increase of fully 16 per cent. (*Printed abstract, fol. 23.*)

And that the assessed valuation of shares of stock in the German National Bank and the taxes thereon were thereby increased to that extent. (*Printed abstract, fol. 24.*)

The same state of facts, substantially, are stated in the opinion filed in the case of *Kimball* v. *Merchants' S., L. & T. Co.*, cited above, and as the general provission of

the revenue law pertaining to the question under consideration are therein fully discussed, and are construed in our favor, we are content to rest this branch of our case upon that decision.

IV.

All taxes levied upon shares of stock in National banks, including the German National Bank, for the year 1877, in the town of South Chicago, are fraudulent and void, because they were intentionally assessed at a greater rate than other moneyed capital in the hands of individuals.

Such assessment is not only a violation of the provisions of the National bankruptcy law, but also of the revenue laws of the State of Illinois.

Sec. 5219 of the U. S. Rev. Stat. reads as follows:

"Nothing herein shall prevent all the shares in any "association from being included in the valuation of the "personal property of the owner or holder of such shares, "in assessing taxes imposed by authority of the State "within which the association is located; but the Legis- "lature of each State may determine and direct the man- "ner and place of taxing all the shares of National bank- "ing associations located within the State, subject only to "the two restrictions that the taxation shall not be at a "greater rate than is assessed upon other moneyed capital "in the hands of individual citizens of such State," etc.

The revenue law of the State of Illinois contains the following provisions:

R. S. Ill., Ch. 120, sec. 35.—"The stockholders in "every bank located within this State, whether such bank "has been organized under the banking laws of this State "or of the United States, shall be assessed and taxed on "the value of their shares of stock therein in the county, "town, district, village or city where such bank or bank- "ing association is located, and not elsewhere, whether

" such stockholders reside in such place or not. Such " shares shall be listed and assessed with regard to the " ownership and value thereof, as they existed on the first " day of May, annually; subject, however, to the restric- " tion that taxation of such shares shall not be at a greater " rate than is assessed upon any other moneyed capital in " the hands of individual citizens of this State, in the " county, town, district, village or city where such bank " is located. The shares of capital stock of National banks " not located in this State, held in this State, shall not be " required to be listed under the provisions of this act."

Sec. 36.—" In each such bank there shall be kept at " all times a full and correct list of the names and resi- " dences of its stockholders, and of the number of shares " held by each, which list shall be subject to the inspec- " tion of the officers authorized to assess property for tax- " ation; and it shall be the duty of the assessor to ascer- " tain and report to the county clerk a correct list of the " names and residences of all stockholders in any such " bank, with the number and assessed value of all such " shares held by each stockholder."

Sec. 37.—" The county clerk, to whom such returns " are made, shall enter the valuation of such shares in the " tax lists, in the names of the respective owners of the " same, and shall compute and extend taxes thereon the " same as against the valuation of other property in the " same locality."

Sec. 38.—" The collector of taxes, and the officer or " officers authorized to receive taxes from the collector, " may, all or either of them, have an action to collect the " tax assessed on any share or shares of bank stock from " the avails of the sale of such share or shares, and the tax " against such share or shares shall be and remain a lien " thereon till the payment of said tax."

Sec. 39.—" For the purpose of collecting such taxes " it shall be the duty of every such bank, or the managing " officer or officers thereof, to retain so much of any divi-

" dend or dividends belonging to such stockholders as shall " be necessary to pay any taxes levied upon their shares " of stock, respectively, until it shall be made to appear to " such bank, or its officers, that such taxes have been paid; " and any officer of any such bank who shall pay over or " authorize the paying over of any such dividend or divi- " dends, or any portion thereof, contrary to the provisions " of this section, shall thereby become liable for such tax; " and if the said tax shall not be paid, the collector of " taxes where said bank is located shall sell said share or " shares to pay the same, like other personal property. " And in case of sale, the provision of law in regard to " the transfer of stock when sold on execution shall apply " to such sale."

It will be seen by the provisions of the revenue law of Illinois above quoted, that shares of stock in State and National banks, located in the State of Illinois, are placed upon precisely the same footing, as far as their liability to assessment and taxation is concerned.

It further appears, from the complainant's bill, that while shares of stock in National banks were assessed at 34% of their face value (*Abstract, fol. 10*), that none of the shares of stock in the State banks doing business at Chicago were assessed at all, although of the admitted value of millions of dollars. (*Abstract, fols. 12 and 13.*)

A more palpable disregard of the positive provisions of the State and Federal statutes relating to this subject, can scarcely be conceived; and it must be admitted, we think, that the gross neglect or the intentional and fraudulent omission of the assessor to assess and return for taxation the shares of stock in State banks, was a grievous injury to the complainant and the other National banks in Chicago.

The statutes of the State of Illinois further provide, R. S., Ch. 12, entitled " Revenue," Sec. 3, subdivision fourth, as follows :

" The capital stock of all companies and associations " now or hereafter created under the laws of this State, " shall be so valued by the State Board of Equalization as " to ascertain and determine, respectively, the fair cash " value of such capital stock, including the franchise, over " and above the assessed value of the tangible prop- " erty of such company or association * * * * " *Provided*, that in all cases where the tangible property " or capital stock of any company or association is assessed " under this act, the shares of capital stock of any such " company or corporation shall not be assessed in this " State. *This clause shall not apply to the capital stock " or shares of capital stock of banks organized under the " general banking laws of this State.*" * * *

The record shows in this case that neither the capital stock and franchises, nor the shares of stock in State banks, were assessed.

Considered with reference to the restrictions imposed by both the State and Federal statutes quoted above, "that " the taxation (upon shares of stock in National banks) " shall not be at a greater rate than is assessed upon the " moneyed capital in the hands of individual citizens of " such State," the unjust, unreasonable, illegal and fraudulent discrimination made by the authorities of the town of South Chicago, against shareholders in National banks, and in favor of moneyed capital in the hands of individuals, is so glaring, that nothing need be said, except to call the attention of the court to the allegations of the bill in that respect.

Leaving out of the discussion the statements of the bill, that the tangible assets of incorporated banks (other than National banks) were not assessed to exceed 10 per cent. of their fair cash value, that the capital stock and franchises thereof, and the shares of stock therein, were not assessed at all, we find that moneyed capital in the hands of individuals was so meagerly assessed, that a mere statement of the facts is enough to convince any unpreju-

diced mind that gross fraud was contemplated, and gross injustice done to stockholders of National banks in the assessment complained of.

It appears from the abstract (*folios 13 and 14*) that in the year 1877 there were eighteen private bankers and banking firms doing business in the town of South Chicago, and that the total assessed valuation of their personal property was less than $48,000—of which sum $40,000 was assessed as money, and $1,200 as credits, etc., and that such assessment was less than 5 per cent. of the aggregate fair cash value of their personal property.

It has frequently been decided by this court that a State law which establishes a mode of assessment by which the shares of National banks are valued higher in proportion to their real value than other moneyed capital, is void; and that taxes levied in accordance therewith are likewise void, to the extent that an unfair discrimination has been made. Upon this point it is sufficient to refer the court to its decision in *People* v. *Weaver* (unreported).

But this court has gone further, and in the case of *Pelton* v. *Commercial National Bank* (unreported), has decided that, although the statutes of a State provide for the valuation of a moneyed capital, for the purposes of taxation, at its true cash value, including shares of National banks, the *systematic and intentional valuation* of all other moneyed capital, by the taxing officers, far below its true value, while National bank shares are assessed at their full value, is a violation of the act of Congress which prescribes the rule by which those shares shall be taxed by State authority.

The principle laid down in the foregoing decision is fully applicable to and governs the facts of this case. It is true that the shares of stock in the German National Bank were not assessed at their fair cash value,—no personal property in the town of South Chicago was—but when shares of stock in National banks are assessed at

34 % of their face value, tangible property of State banks at 10 % of their cash value, and shares of stock therein not at all, and moneyed capital in the hands of individuals, such as private bankers and banking firms, at not to exceed 5 per cent. of its fair cash value, we must insist that the intentional and fraudulent discrimination against shareholders of National banks is too apparent to require or admit of further argument.

V.

All the taxes upon personal property in the town of South Chicago, for the year 1877, are illegal and void, because the assessment upon which the same are based, was made in classes, upon different standards of value, and not upon a uniform standard, so as to require each person to pay a tax in proportion to the respective or relative value of his property; because one-half of the personal property therein situated was fraudulently omitted from the assessment roll, and wholly escaped taxation; and because none of said property was assessed at its fair cash value.

The Constitution of the State of Illinois lays down the following general rule, upon the subject of taxation:

"The General Assembly shall provide such revenue "as may be needful, by levying a tax by valuation, so that "every person and corporation shall pay a tax *in proportion to the value* of his, her or its property—such value "to be ascertained by some person or persons to be elected "or appointed, in such manner as the General Assembly "shall direct, and not otherwise," etc.

See Constitution of Illinois, Art. 9, "Revenue," Sect. 1, R. S. Illinois.

The General Assembly of the State of Illinois has provided by law, that one assessor shall be elected by ballot, in each town in the State, who shall hold his office for one year.

R. S. Ill., Ch. 139, Sec. 61.

The oath and duties of the assessor, and rules for assessment, prescribed by statute, are substantially contained in chap. 120, R. S. of Ill., sec. 74 to 85, inc.

The General Assembly of Illinois has enacted the following rules for valuing personal property, to wit:

R. S. Ill., Ch. 120, sec. 3.

"Personal property shall be valued as follows:

"First—All personal property, except as herein "otherwise directed, shall be valued at its fair cash value. "Second—Every credit for a sum certain, payable either "in money or labor, shall be valued at a fair cash value "for the sum so payable; if for any article of property, "or for labor or services of any kind, it shall be valued at "the current price of such property, labor or service. "Third—Annuities and royalties shall be valued at their "then present total value. Fourth—The capital stock of "all companies and associations now or hereafter created "under the laws of this State, shall be so valued by the "State Board of Equalization as to ascertain and determine, respectively, the fair cash value of such capital "stock, including the franchise, over and above the assessed value of the tangible property of such company "or association. [Said board shall adopt such rules and "principles for ascertaining the fair cash value of such "capital stock as to it may seem equitable and just; and "such rules and principles, when so adopted, if not inconsistent with this act, shall be as binding and of the same "effect as if contained in this act: subject, however, to "such change, alteration, or amendment as may be found "from time to time to be necessary by said board]:

"*Provided*, that in all cases where the tangible property or capital stock of any company or association is "assessed under this act, the shares of capital stock of any "such company or association shall not be assessed or "taxed in this State. *This clause shall not apply to the*

" *capital stock or shares of capital stock of banks organized* " *under the general banking laws of this State.*

" *Provided, further*, that in assessing companies and " associations organized for purely manufacturing pur- " poses, or for printing, or for publishing of newspapers, " or for the improving and breeding of stock, the assess- " ment shall be so made that such companies and associa- " tions so organized shall only be assessed as individuals " under like circumstances would be assessed, and no " more; and such companies and associations shall be " allowed the same deductions as are allowed to individ- " uals."

An examination of the allegations of the bill shows conclusively that the assessor of the town of South Chicago has in no instance assessed personal property at its fair cash value, or so as to require each person to pay a tax in proportion to the value of his property, but on the contrary has assessed the same in classes, so as to create a fraudulent discrimination between taxpayers, and unjustly relieve a portion of the property of said town from taxation at the expense of the balance. That one-half of the property of said town has escaped taxation altogether; that National bank stock was assessed at 34 per cent. of its face value; that State bank stock was not assessed at all, and the tangible property of State banks at not to exceed 10 per cent. of its fair cash value; that private bankers were not assessed at over 5 per cent. of the fair cash value of their personal property; boats and vessels at not over 10 per cent., and merchants and manufacturers at less than 10 per cent. In short, that the assessor of said town wholly disregarded the standard prescribed by law for valuing property, and set up in lieu thereof an uncertain, varying and shifting standard of his own, in direct violation of law, and that the taxes in controversy are based upon the assessment so made.

A mere statement of the allegations of the bill, which are taken from the assessment roll, that the total

amount of money liable to assessment in the town of South Chicago, outside of the banks, on the first day of May, 1877, was only $70,000, of credits $28,000, and of stocks and bonds less than $5,000, is enough, of itself, to show that the assessment was a fraudulent one, and that all of the provisions of the revenue law relating to the assessment of those classes of personal property must have been intentionaly ignored or disregarded.

The Supreme Court of the State of Illinois has frequently decided that the principles of "equality" and "uniformity" are indispensable to all legal taxations, general or local; and that to secure uniformity, two things are essential:

1st. The assessment mnst be just and equal in proportion to the value of the property liable to assessment.

2d. When thus assessed, the rate shall be uniform to every person, and on every species of property returned by the assessor.

City v. *Larned*, 34 Ill. 203.
Sherlock v. *Winetka*, 68 Ill. 530.

So it has also been held that the rule of equality and uniformity of taxation, prescribed by the Constitution, must be applied not only to the rate of taxation and to the district to be taxed, but also to all the property subject to taxation.

Primm v. *City of Belleville*, 59 Ill. 142.

The rule of uniformity in taxation prescribed by the Constitution of the State of Illinois, has been frequently violated, or attempted to be, by making a distinction between the property of corporations and that of individuals, in the assessment, so as to compel the former to pay more than its fair proportion of taxes; and the Supreme Court of the State of Illinois has invariably held that such discrimination between taxpayers was fraudulent, and that the taxes based upon such an assessment were illegal and void.

A very full discussion of this subject is contained in the opinion of the court filed in the case of *The Board of Supervisors of Bureau County* v. *The Chicago, Burlington & Quincy R. R. Co.*, and reported in 44 Ill. 229.

The conclusion arrived at by the court, concisely stated is, that, "The rule of uniformity of taxation prescribed in the Constitution requires that one person shall not "be compelled to pay a greater proportion of the taxes, "according to the value of his property, than another; "and that where the property belonging to individuals in "a county has been assessed at less than its actual value, "the constitutional rule of uniformity forbids that the "property of a railroad company in such county should "be assessed upon any greater per cent. of its value than "that of individuals."

From the statement of facts in the case, it appeared that 40 per cent. had been added to the valuation of railroad property.

We quote from the opinion of Justice BREESE as follows:

"It is insisted by appellees, that their property, by "this addition of forty per cent. on its valuation as re- "turned by them to the county clerk, placed on it by the "board of supervisors, has the effect to cause them to pay "a greater proportion of the revenue than is demanded of "individuals listing their property for taxation in the same "county. If this be so, no just mind, with the Constitu- "tion of this State before him, could sanction the pro- "ceeding. The great central and dominant idea in that "instrument is uniformity of taxation; and no power ex- "ists, or should exist, in any corporate authority to go "counter to this command of the fundamental law. A "mode has been furnished by law, by which this uniformity "should be obtained; and that is, *that property shall be* "*assessed at its actual value*, and that the rate of taxation "placed upon it shall be the same, regardless of persons or

" ownership. Persons are elected to ascertain this value " and the rate is prescribed.

" It suffciently appears that the schedule returned by " the appellees to the clerk of the County Court fixed the " value of the property owned by them in Bureau County " on the same or on a more liberal basis than the several " assessors in the various towns fixed upon the property " of individuals in the same county; though in neither case " was the property valued at anything near its actual cash " value. For instance, while the valuation of property of " individuals ranged from one-fifth to one-third of its cash " value, that of the appellees ranged from one-third to one- " half of its actual value. * * *

" as to justify any and every lawful expedient for relief " against it.

" The framers of our Constitution, and our law-mak- " ers, to their credit be it said, have kept steadily in view " the principles of equality and justice in adopting a sys- " tem of taxation which commends itself to the favor and " approbation of all well-organized minds.

" It is no argument to urge that the fault is with the " assessors, in the case of individuals, and with railroad " companies, in making out their schedules for the county " clerks. If the assessors violate their duty, are railroad " companies to be the sufferers? If they neglect to be " fully up to all the requirements of the law, is that any " reason why A. should pay 40 per cent. more taxes, in " proportion to value, than B.?

" The rule adopted by the assessors in this State has " grown into a custom, and has been tacitly sanctioned " by every department of the Government for a long " course of years, and it is now too late to challenge it. " Even so late as the last special session of the Legislature, " that body, by clear implication acknowledged the custom " and yielded to its influence by the provisions of the act " to tax the shares in National banks. They therein im- " plicitly declare that such shares are to be taxed the same " as other property. A share of bank stock under that " bill is not required to pay more State or local tax than " a piece of land, or a house of equal value; and the plain " inference is, if such property be assessed on only one- " third of its actual value, bank stock shall be assessed on " the same per cent of its actual value.

" Would not the sense of justice of every man in this " community be outraged by allowing this or any other " depreciation to one class of people, and demanding of " another a high tax on a similar article of the same actual " value? The proposition cannot commend itself to the " favor of any just man, and can receive no countenance " in a court of justice.

"It is an admitted fact on both sides to this "controversy, that the property of no one owner in "this county of Bureau has been taxed on its real value, "and that the per cent. added by the Board of Super- "visors to the valuation of the property of appellees im- "poses on them a greater proportionate burden than the "law requires them to bear. We are of this opinion, and "therefore consider the action of the board unfounded in "justice, and in direct opposition to the Constitution. "The great and attractive feature of uniformity has been "disregarded by the board and appellees victimized. It "may be very desirable that the greatest share of the "public burden shall be borne by these corporations, but "until there be a radical change in our fundamental law it "cannot be done. They stand on the platform of equal- "ity before the law, and no greater burden for the sup- "port of government can be imposed upon them than can "be placed on the individual taxpayer."

See, also,

C. & N. W. Ry. Co. v. *Suprs. of Boone Co.* 44 Ill. 240.

Darling v. *Gunn*, 50 Ill. 424.

C. & A. R. R. Co. v. *Livingston Co.* 68 Ill. 459.

Lee v. *Ruggles*, 62 Ill. 427.

In the case of *Lee* v. *Ruggles*, last cited, the taxes complained of were special, levied by commissioners appointed by an act of the Legislature, for the purpose of draining certain lands in Mason County, Illinois. Provision was made by said law for dividing said lands into three classes, and for different rates of taxation upon the same.

It was held by the court that such taxes were illegal, and violated the principles of uniformity required by the Constitution, and that there was no equitable claim upon the complainant to pay the same as a condition of relief.

An additional ground for declaring the personal property taxes of the town of South Chicago void, is that the assessor of said town willfully and negligently (and willful negligence we claim to be fraud, if anybody is injured thereby) omitted to assess one-half of the personal property of said town.

Upon this branch of the case we desire to call the attention of the court to the very curious, not to say reprehensible, conclusion of the Supreme Court of the State of Illinois, as expressed in the opinion of Mr. Justice McALLISTER in the case of *Dunham* v. *City of Chicago*, 55 Ill. page 361.

We quote:

"Again, it is urged that the whole tax is void, because the assessors failed to list and assess personal property subject to taxation, and that the court erred in excluding evidence to sustain this position. That a statute which in terms, or by necessary implication, authorized the omission of real or personal property in the city, so as to destroy the uniformity in respect to persons and property within the jurisdiction of the city, required by the fifth section of the ninth article of the Constitution of 1848, would be void, there can be no doubt. But the position that it lies with ministerial officers to defeat the collection of taxes by such omissions, *whether made willfully or from carelessness*, is not tenable. Such officers may make themselves amenable to the law for misconduct in office, but cannot thus stop the wheels of government."

What can be said of such a proposition as this, laid down by the highest judicial tribunal of a sovereign State? The Legislature cannot enact a law omitting real and personal property from liability to assessment and taxation, and if it should attempt to do so, both the law and the taxes assessed in pursuance thereof will be held void by the courts. But if an assessor of a town, who is the creature of the Legislature, should willfully omit to assess

property, in violation of the Constitution and of the act of the Legislature from which his authority is derived, no person, however seriously he may be injured by his willful or fraudulent acts, is entitled to any relief in a court of equity. An assessor may do what the Legislature itself could not do or authorize him to do. Should the Legislature attempt to authorize the act, both the authority and the act are void; but if the assessor does the act without authority of the Legislature, then the act is valid.

The opinion cited may be safely put down as the only judicial authority upon record which concedes to the creature greater power than his creator has any authority to confer.

The general tenor of the Illinois decisions is to the effect that property cannot be assessed in classes, and that any attempt to make one person or class of persons pay more than their fair proportion of taxes, by a fraudulent discrimination in the assessment, will avoid such taxes, whether it arise from some act of the Legislature or from the willful acts of the assessor.

The exception to the rule, according to the decision in 55 Ill., is where the assessor intentionally fails to list and assess personal property at all.

If he assesses bank stock and railroad property at fair cash value, and other personal property at one-third of its fair cash value, banks and railroads have an ample remedy in equity; but if he assesses bank stock and railroad property only, and intentionally omits all other property, then banks and railroads have no remedy, because a ministerial officer cannot defeat the collection of taxes in that way!

The office of an assessor is a political one. He may so assess property as to cast upon his adversaries the whole burden of taxation for his district, and the court says that the overburdened taxpayer has no remedy but to sue him; but if he assesses his political friends at one-third the value of their property, and his adversaries at two thirds, then

the courts will grant relief, because the principle or rule of uniformity has been violated.

If there is any soundness in the rule that courts will grant relief where property has been assessed in classes, so that some taxpayers are obliged to pay more than their fair proportion of taxes, there can be no justice in refusing to extend it to a case where, as is alleged, through the negligence and carelessness and fraud of the assessor, fully one-half of the personal property of the town escaped taxation.

The remaining objection to the validity of the personal property taxes of the town of South Chicago, which we propose to discuss, is, that the assessment of said town upon which said taxes are based, is made upon a different standard from that fixed by the Legislature, is in violation of law, and that by reason of the gross neglect and the intentional omission of the assessor to comply with the positive requirements of the statutes, gross frauds have become possible, and have in fact been perpetrated upon many of the taxpayers of every community in the State.

We have already quoted from the revenue law of the State of Illinois, the provision requiring that all personal property should be valued at its fair cash value; and the record in this case shows that none of the personal property in the town of South Chicago was so assessed, but that, upon the contrary, such assessment was intentionally made in direct violation of the law upon that subject, and upon a shifting, varying and uncertain standard set up by the assessor.

Can such an assessment be valid, and the taxes based thereon enforced and collected?

We claim that a valid tax must be supported by a *valid assessment; and that an assessment, to be valid, must be made in substantial compliance with the statute.*

The Supreme Court of the State of Wisconsin has gone further than any other, perhaps, in asserting and defining the true rule upon the subject of taxation, and

in holding that assessors must substantially comply with the requirements of the statute, in making their assessments, if they would lay the foundation for a valid tax.

The Constitution of that State provides that "the "rule of taxation shall be uniform, and taxes shall be "levied upon such property as the Legislature shall pre- "scribe."

R. S. Wis. p. 28, art. 8, sec 1.

The Legislature has directed that "real property shall "be valued by the assessor from actual view, or from the "best information that the assessor can practically obtain, "at the full value which could ordinarily be obtained there- "for at private sale. In determining the value, the as- "sessor shall consider, as to each piece, its advantage or "disadvantage of location, quality of soil, quantity of "standing timber, water privileges, mines, minerals, quar- "ries or other valuable deposits known to be available "therein, and their value."

R. R. Wis. ch. 48, sec. 1052.

And that "all articles of personal property shall, as "far as practicable, be valued by the assessor upon actual "view at their true value," etc.

R. S. Wis. ch. 48, sec. 1055.

We call the attention of the court to three quite recent decisions of the Supreme Court of Wisconsin construing and applying the provisions both of the Constitution and the statute to the action of assessors in making their assessments; no question having arisen in any of them as to the rate of taxation.

In the case of *Hersey* v. *The Board of Supervisors of Barron County*, 37 Wis. p. 75, the court followed substantially the rule laid down by the Supreme Court of the State of Illinois.

The assessors and board of review of that county, in violation of the statutory requirements, adopted certain arbitrary rules of their own, and assessed lands in five distinct classes, as follows:

1. Pine on first-class driving streams, within the limits of two miles' hauling, at $2 per M.; beyond those limits, $1.50 per M.

2. Pine on second-class driving streams, at $1.50 per M. within two miles, and $1.00 per M. beyond.

3. Pine on fourth-class waters at 50 cents per M.

4. Lands entered for farm lands: Wild, at from $2.50 to $10 per acre, according to locality; and cultivated at $6 per acre.

5. Cut lands, according to inspectors' reports, at 12½ cents per acre.

The court held that although these rules might have been adopted *without any fraudulent intent to favor any one person at the expense of another, yet a tax based upon such a valuation is invalid, and its collection will be restrained at the suit of a person injured thereby.*

In its opinion, the court say: "A valuation is essential to lay the foundation for the tax; and if no legal valuation was practicable, it follows that any tax based upon a wholly unauthorized valuation, would be illegal and void. The allegation is a *felo de se*.

"But it is said by the counsel for the defendants, that even if the rules above quoted were absolutely followed and strictly pursued by the assessor in making the valution, yet if they were honestly adopted as expressive of the judgment of the assessor, there being no question of fraudulent intent, a court of equity would not say the assessment was void. But how can a court of equity pronounce an assessment valid which is in plain violation of law? Real estate must be valued in the manner and upon the principles prescribed by the statute. The assessor may make a mistake in the valuation while honestly attempting to execute the law. Errors of judg-

"ment, inequalities in valuation, will intervene in all "proceedings of this character. It might not be practi- "cable for the assessor to go over every foot of ground, "and thus, from 'actual view' of every part of a tract, "determine its true market value at the time of its assess- "ment. But there should be an attempt to substantially "comply with the law. Here we feel warranted in "assuming, upon the admissions in the answer, that the "law was disregarded, the assessor adopting, for the guid- "ance of his judgment, rules which not only departed "from the statutory requirements, but which could not "fail, in their operation, to defeat a fair and just valua- "tion. That such must have been the necessary effect of "the rules upon the valuation seems to us perfectly obvi- "ous."

In the case of *Marsh et al.* v. *The Board of Supervisors of Clark County et al.*, 42 Wis. p. 502, the court lays down the broad rule that the provision of the State Constitution which declares that the rule of taxation shall be uniform, requires a uniform *assessment of value; and no tax upon property can be supported, which does not proceed upon valid assessments, legally made upon a uniform rule.*

The court further holds that violations or evasions of duty imposed by law to secure a just and uniform rule of assessment, whether occurring *by mistake in law or fraud in fact, which go to impair the general equality and uniformity of the assessment, and thereby to defeat the uniform rule of taxation, vitiate the whole assessment as the foundation of a valid tax.*

The chief ground of complaint in this case was, that the assessor, instead of assessing lands from actual view and at their full value, and with reference to their relative value, as required by statute, arbitrarily assessed substantially all real estate at two dollars per acre. The lower court found, among other things, that the assessors did not intentionally or fraudulently make a distinction in the

assessment against the plaintiffs or other non-residents, for the purpose of making them pay more than their just and equal portion of the taxes, but that on the contrary they made a just, equitable and fair assessment of the lands situated in their respective towns.

We quote from the able opinion of Chief Justice RYAN, as follows:

"Doubtless taxes are a debt due to a State by its citi-
"zens for protection in life, liberty and property. *War-*
"*den* v. *Supervisors*, 14 Wis. 618. But the debt is limit-
"ed, and matures only upon a valid exercise of the tax-
"ing power. Here the exercise of the taxing power
"must be upon a uniform rule; and it is only upon an
"equal assessment as the foundation of uniform appor-
"tionment, that the taxing power can be put in opera-
"tion. The statutes of the States generally provide for
"assessment, as an official estimate of the sums which are
"to constitute the basis of an apportionment of a tax be-
"tween the individual subjects of taxation; and when
"they so provide, the assessment becomes an essential
"part of the process in the collection of taxes. (*Cooley*
"*on Taxes, Ch. XII.*) But, under our Constitution, the
"assessment is not only an essential part of the process,
"but seems to be jurisdictional. For in no other way
"does it appear possible to collect taxes upon property
"by uniform rule. Indeed, the Constitution so clearly
"implies uniform assessment of values as an essential pre-
"requisite to taxes upon property, that it is not unsafe to
"hold that the Constitution itself makes such assessment
"jurisdictional. It is certainly so by statute. And such
"a tax, to be valid under the Constitution, must proceed
"upon a regular, fair and equal assessment of the proper-
"ty to be taxed, made by the officers, in the manner and
"with the securities and solemnities provided by statute.
"These last the Legislature may make and alter at pleasure;
"but no statute can dispense with assessment, or with its
"essential fairness and equality. (*Smith* v. *Cleveland*,

" 17 Wis. 556.) For without these, taxes cannot go upon " a uniform rule. The uniformity of the rule may be " broken as well by inequality of assessment of values to " be taxed, as by inequality of rule in the tax itself. And " no tax upon property can be supported which does not " proceed upon valid assessment, legally made upon uni- " form rule.

" Of course, assessments are as liable to error as " other processes. Assessors may commit errors of " judgment and mistakes of fact. So that these are excep- " tional, and happen in good faith, not affecting the " principle or the general equality of the assessment, " they will not vitiate it. So this court has frequently " held. *Weeks* v. *Milwaukee*, 10 Wis. 263; *Dean* v. *Glea-* " *son*, 16 id. 1; *Hersey* v *Supervisors*, id. 185; *Smith* v. " *Smith*, 19 id. 615. But, as will be seen by cases cited " *infra*, the court has also frequently held that violations " or evasions of duty imposed by law to secure a just and " uniform rate of assessment, whether occurring by mis- " take in law or fraud in fact, which go to impair the " general equality and uniformity of the assessment, and " thereby to defeat the uniform rule of taxation, vitiate " the whole assessment as the foundation of a valid tax.

" It is with a view to the general justice of assess- " ments that various statutes have defined the duties of " all officers having part in making or correcting them. " And it is time that these officers should be reminded of " the language of this court in the first case upon the " subject, that they must not disobey positive mandates " of the law, and so make assessments in their own " wrong. *State* v. *Assessors*, 1 Wis. 345."

In the case of *Schettler* v. *The City of Fort Howard, impld., etc.*, 43 Wis. p. 48, the only ground of objection to the tax was that the city assessor *uniformly and intentionally* assessed the property in that city at *one-third* of its real value, instead of at the *full* value, etc.; and the

court held that the assessment was invalid, and that the collection of a tax based thereon would be enjoined.

The court, in its opinion, say that "it was argued by "the counsel for the city, that as all of the property was "valued upon the same basis, the illegality in making the "assessment could work no injury to the plaintiff. But "if it be true, as this court has held, that a valid tax must "be founded on a valid assessment, the argument proves "nothing. There is really no security to the taxpayer, ex- "cept in requiring assessors to perform their duties and "make assessments in substantial compliance with the "law. For if the assessor in one town is permitted to as- "sess property at one-third its value, the assessor in "another town may assess it at one-half or one-fourth, "and still another at double its value, substituting the "mere caprice of the officer for the rule of the statute, and "resulting in the grossest inequalities and injustice in the "taxes imposed. Therefore, without considering any other "question in the case, we affirm the judgment, on the "ground that the assessment as made was illegal and "void."

A separate opinion was filed in this case by RYAN, Chief Justice, which we give in full.

It reads as follows:

"Some surprise and apprehension were expressed at "the bar, upon the argument, at an intimation from the "bench of the ground of judgment in this case following "*Hersey* v. *Supervisors*, 37 Wis. 75, and *Marsh* v. *Super-* "*visors*, 42 Id. 502.

"It was intimated, as it had been on other occasions, "that the statutory rule of assessment is frequently or "generally disregarded by assessors, and that the conse- "quence of holding assessors to a compliance with their "duties, under the statute and the Constitution, would be "disastrous.

"It is impossible for me to judge how far so vicious "a habit may prevail among assessors. But even if it

" were universal, it seems impossible to me that it should " influence the court to hesitate in giving effect to all the " consequences of their willful disregard of duty. If it " be true that assessments throughout the State are fre- " quently, or generally, or universally made in defiance of " the statutory rule, it appears to me better that the State, " and the municipal corporations of the State, should " suffer inconvenience, than that our whole system of " taxation should, at the mere will of local officers, be a " fraud upon the Constitution and statutes carefully framed " in compliance with the Constitution.

" The question, I think, resolves itself into this: " whether statutory officers can, in the execution of their " office, willfully disregard the safeguards of the statute " which creates their office; whether it is for the Legisla- " ture to provide a general and constitutional rule of " assessment, or for assessors to set the statute at defiance, " and to establish, each for himself, several and unconsti- " tutional rules.

" The statute is so carefully framed that it does not " lightly trust the conscience of assessors. It requires " from each a precise and positive affidavit that he has " made his assessment upon the statutory rule.

" If an assessor do not annex his affidavit to his " assessment roll, he does not complete his duty, and " there is in law no assessment. If the assessor make and " annex the affidavit to an assessment made in violation of " the statutory rule, he takes an absolutely false oath in " the execution of his office. What faith can be reposed " in an assessment so made and so verified? *Falsus in* " *uno, falsus in omnibus.* What security is there that " such an assessment is just, equal or honest in other " respects, even upon the rule of the assessor?

" It is very easy for assessors to be honest in the dis- " charge of their duties; and if honest, their errors of " judgment can operate little to impair the uniform rule of " the Constitution. If they should be suffered to substi-

" tute a rule of their own for the rule of the statute, and " yet to uphold their assessments by an oath that they have " followed the statutory rule, it appears to me not extrava- " gant to say that taxation in this State would rest less " upon a uniform rule of assessment than upon a uniform " rule of fraud and perjury.

" I am quite sure that no argument of inconvenience " will ever induce this court to lend its sanction to such " deliberate fraud perpetrated in the name and by the au- " thority of the State, in a proceeding which purports to " be a just and uniform exercise of sovereign power. It " seems to me that would be a wanton abuse of judicial " authority."

No case has been decided by the Supreme Court of the State of Illinois, so far as we have been able to discover, which presented directly the question as to the validity of a tax based upon an assessment made in direct violation of the statutory enactment requiring property to be assessed at its actual value.

It is true that in the cases of *Bureau County* v. *C. B. & Q. R. R. Co.*, and *Chicago & N. W. Ry. Co.* v. *Boone County*, cited above, it sufficiently appeared that the most of the property was assessed at one-third of its actual value, while railroad property was assessed at a much higher rate. The court decided the assessments against the railroad companies to be void, because the constitutional principle of uniformity had been violated, and it was not called upon to determine what effect a violation of the statutory rule would have upon the assessment and the tax based thereon.

We claim, therefore, that expressions upon that subject, contained in the opinion of Judge BREESE, are mere *dicta*, and not the solemn judgment of the court upon a matter so important to the public.

Had the question ever been presented directly to the court in a suit where it would be required to pass upon it in order to settle the rights of parties, it seems impossible

that any different conclusion could have been reached than that arrived at by the Supreme Court of the State of Wisconsin in the case of *Schettler* v. *Fort Howard*, cited above.

Referring to the opinion of Mr. Justice BREESE in *Bureau County* v. *R. R. Co.*, 44 Ill. 239, we find the following language: "The rule adopted by the assessors in "this State has grown into a custom, and has been tacitly "sanctioned by every department of the Government for a "long course of years, and it is now too late to challenge "it." And again he says, in the case of *C., & N. W. Ry. Co.* v. *Boone County*, 44 Ill. 243: "A long, uniform "and unchallenged practice under a law, is strong evi-"dence of the real meaning of the law."

It is a sufficient answer, perhaps, to these expressions, to say that there is no evidence in the cases from which we have quoted, except the statements of the judge, that there ever was any rule adopted by the assessors of the State for the habitual violation of the provisions of the revenue law, which had grown into a custom, or that the same had been tacitly sanctioned by any department of the Government, or could be. The statement that such was the fact seems to be a mere assumption upon the part of the judge who wrote the opinion; and certainly, so far as this case is concerned, there is no evidence whatever in the record of the existence of any such custom. Moreover, we apprehend that the general principle laid down in one of the opinions, that "a long, uniform and unchal-"lenged practice under a law is strong evidence of the "real meaning of the law," applies only to those laws where there is some doubt as to the actual meaning of the language used, or where it is difficult to ascertain the real intent of the Legislature. Surely no custom, however long continued, of assessing propertyat one-third of its actual value, would make the words "actual value," as used in the law, mean anything else but "*actual value*."

There is no ambiguity in the term—there can be no doubt as to intent of the Legislature.

But we claim, in addition, that no department of the Government, whether township, county or State, except the courts could correct, set aside or avoid an assessment made, however faulty the rule applied by the assessor might be, or however much he may have violated the statutory rule upon that subject, and if they had no power to correct or set it aside, how can they be said to have sanctioned it tacitly or otherwise?

The revenue law of the State provides for a review of the assessment in each town by the town board of review, who upon "the application of any person consid-"ering himself aggrieved, or who shall complain that the "property of another is assessed too low, shall review the "assessment, and correct the same as shall appear to "them just. No complaint that another is assessed too "low, shall be acted upon until the person so assessed or "his agent, shall be notified of such complaint, if a resi-"dent of the county." * * * * *

R. S. Ill. Ch. 120, Sec. 86.

It will be observed that the action of the town board is limited to equalizing as far as may be the assessments upon the property of individuals by reducing, upon complaint made, the valuation of property which has been assessed relatively too high, and increasing that which has been assessed relatively too low. No authority is given them to originate an assessment against persons who have been overlooked or intentionally omitted, or property which has not been assessed at all, nor to set aside an assessment upon the ground that it has been made upon an arbitrary standard of value set up by the assessor in direct opposition to and in violation of the statutory rule.

The revenue law has further provided for the equalization of assessments by the county board, and its powers and duties are substantially as follows:

1. To assess lands listed by the county clerk and not assessed by the assessor, and to make alterations in descriptions of real property.

2. To equalize assessments as between individuals.

3. To pass upon the application of any person who is assessed upon property claimed to be exempt from taxation.

4. To ascertain whether the valuations in one town or district bear a just relation to all the towns and districts in the county, and to increase or reduce such valuation, under certain restrictions, so as to produce such just relation; and "if the county board of any county shall find the aggregate assessment of the county is too high or too low, or is generally so unequal as to render it impracticable to equalize such assessment fairly, they may set aside the assessment of the whole county, or of any township or townships therein, and order a new assessment, with instructions to the assessor to increase or diminish the *aggregate* assessment of such county or township, as the case may be, by such an amount as said board may deem right and just in the premises and consistent with this act."

R. S. Ill. ch. 120, sec. 97.

It would seem that the right of the county board to order a new assessment is limited to cases where the *aggregate* assessment is too high or too low, or is generally so unequal as to make it impracticable to equalize the assessment fairly. If the aggregate is neither too high nor too low, or if it be practicable to equalize the assessment as between towns, no power exists in the county board to order a new assessment.

The Legislature has also created a State Board of Equalization, and prescribed its powers and duties.

It is required "to examine the abstracts of property "assessed for taxation in the several counties of the State "as returned to the auditor, and shall equalize the assess- "ments as hereinafter provided; but said board shall not "reduce the aggregate assessed valuation in the State, "neither shall it increase said aggregate valuation, except "in such an amount as may be reasonably necessary to a "just equalization, and not exceeding one per cent. on "such aggregate assessed valuation; but this rule shall "not apply to railroad property."

R. S. Ill. ch. 120, sec. 105.

The board is also authorized to make original assessments upon certain classes of property, such as capital stock of corporations, railroad tracks and rolling stock, etc., but so far as town assessments upon the property of individuals and corporations generally are concerned, it is limited in its examinations to the abstracts furnished by county clerks to the State Auditor, and in its powers to an equalization of the assessments as between counties. It has no power to adjust equities as between towns or individual taxpayers, much less to set aside an assessment and order a new one, upon any ground whatever. Besides, we are unable to see how the State board can ever satisfactorily ascertain upon what basis property is assessed in any locality, whether at its real value or at any percentage thereof. It deals only in aggregates.

We insist, therefore, that there is no proof of any custom among assessors in the State of Illinois of assessing property at one-third of its real value; and if such were the fact, there has not been, and of necessity could not be, for the reasons stated by us, any sanction of such a reprehensible custom by any department of the Government.

If there has been any such long-continued willful and intentional violation of the law, it may perhaps have been patiently endured by taxpayers who were injured thereby,

and even approved by those who were benefited, but no department of the Government can be said to have tolerated, much less sustained it, and surely no court ought to sustain acts of public officers, however long-continued, which are willful violations of the law under which they are appointed, and which are deliberate frauds both upon the Government and the people, as well as upon the law itself.

VI.

It may be suggested, perhaps, that the relief which we ask for in the courts might have been obtained by timely application to the town or county boards to have the assessments corrected.

Our reply is, that no power has been conferred upon any branch of the Government to correct any assssments systematically made in willful violation of the principle of uniformity laid down by the Constitution, and in utter disregard of the safeguards enacted by the Legislature for the express purpose of securing a just and equal assessment.

No board of review can correct an assessment based upon such deliberate and unblushing fraud and perjury as the record discloses in this case. It is an utter impossibility. A court of equity, and it alone, can declare the assessment void, and outside of such court there is no remedy given to the defrauded taxpayers anywhere.

VII.

There remains but one further question to be considered, and that is whether any, and if so, what sum should be paid by the taxpayer, under the circumstances of this case, as a condition of relief.

The general rule that who seeks equity must do equity, is too well settled to admit of question, and the complainant in its bill has offered to do so, but what human being can tell or ever ascertain what sum the bank

should pay as its just share of a legal tax? Who is to ascertain and determine the value of the property which escaped taxation altogether by reason of the departure of the assessor from the standard prescribed by the Legislature, and by reason of his fraudulent acts and omissions? Who is to adjust and settle the equities between taxpayers who have been assessed in classes, and their property valued on a shifting and varying basis, ranging from one-twentieth to one-third of its real value. Is all property to be raised to one-third of its real value, being the assessor's standard for National banks, or reduced to one-twentieth, being his standard of value for private bankers, and, if either be done, what then is the sum that the German National Bank should pay as a condition of relief?

Finally, if the assessment is absolutely void; if no legal foundation has been laid upon which a legal tax can be based; if there is in fact no valid tax at all, and the collecting officers of the town or county are attempting to exact money unlawfully from the complainant, why should it pay anything as a condition of relief?

Chief Justice RYAN, of Wisconsin, in discussing this point, states so clearly and conclusively what we believe to be the law upon this point, that we quote his language from the opinion in *Marsh* v. *Supervisors, etc.*, cited above, as follows:

"The learned counsel also pressed upon us the rule "that he who seeks equity should do equity; and that the "appellants should pay their fair taxes before they could "have relief against the tax sale. And he insisted that the "appellants could not have relief without showing injus-"tice done to them by the tax for which the deed was "about to issue. We should not of course question either "of these positions in a case in which they could properly "arise.

"The difficulty of applying either rule in the present "case is obvious, and has already been indicated. The "trouble is, that there is no tax; therefore, no appor-

" tionment of the appellant's share of a tax. It is thus " impossible for the appellants or for the court to say what " would be their proportion of a valid tax. And it is " surely sufficient injury, and sufficiently inequitable to " support this suit, that a tax deed of the appellant's land " will issue unless they will pay a sum as a tax for which " no tax has been assessed. An illegal tax is none the " less illegal because it may happen to be the same or " even less than a legal tax might have been. When, as " in this case, the whole assessment is a fraud upon the " law and an evasion of the Constitution, every exaction " of a tax purporting to be levied upon it is a wrong—an " unlawful exaction of money, not legally or equitably " payable, under false color of a legal proceeding."

VIII.

Upon the admitted facts of this case, and the legal propositions which we have presented, we respectfully submit that the decree of the Circuit Court dismissing the complainant's bill should be reversed, and this cause remanded for further proceedings.

D. K. TENNEY,
J. M. FLOWER,
Counsel for Appellant.

FILED
FEB 24 1881
JAMES H. McKENNEY, Clerk.

IN THE

Supreme Court of United States,

(No. 225.)

OCTOBER TERM, A. D. 1880.

THE GERMAN NATIONAL BANK OF CHICAGO,
Appellant,

vs.

MARK KIMBALL, COLLECTOR OF THE TOWN OF SOUTH CHICAGO, AND SAMUEL H. McCREA, TREASURER, ETC.
Appellees.

Appeal from the Circuit Court of the United States, for the Northern District of Illinois.

REPLY TO APPELLEES' ARGUMENT.

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1881.

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REPLY TO APPELLEES' ARGUMENT.

The argument filed by the counsel for appellees in this cause virtually concedes that the following points made by us in our former brief are well taken, to wit:

1. That a National bank may file a bill in equity as the trustee of its stockholders.

2. That a court of equity will, in certain cases, entertain jurisdiction of a suit to restrain the collection of personal property taxes.

3. That one-sixth of the taxes in question have been declared void by the Supreme Court of Illinois.

Counsel seeks to avoid the effect of his admission as to the second point, by claiming that the admitted facts in this case do not bring it within the class of cases in which it has hitherto been held that a bill of this character will lie, and yet it is conceded that a court of equity will enjoin the collection of a tax *levied without authority of law, or when the law under which it is levied violates the rule of uniformity prescribed by the Constitution.*

(*Argument of Appellees, p. 18.*)

The effect of the admission as to the third point is sought to be avoided by the claim that appellant had an adequate remedy at law as to the one-sixth of the taxes held to be void, by first paying them and then bringing assumpsit to recover them back; and in his argument states (p. 38), that "in *Kimball* v. *Merchants' Savings, Loan* "*and Trust Co.* 89 Ill. 611, the remedy was in fact by bill, "to which demurrer was filed, but the jurisdiction of the "former (court of law) was expressly waived, so that we "have a right to insist upon the affirmance of the decree "as to the whole tax."

It is a sufficient reply to say, that the report in that case shows no waiver of jurisdiction, and that the court expressly decided that "a court of chancery has jurisdic- "tion to enjoin the collection of a tax, and will exercise "it *in all cases* where the tax has been levied without "authority of law."

It is further claimed that the allegations of the bill do not warrant the conclusion that the assessment is excessive; and counsel states what is not true in point of fact, that "upon the face of the bill it is shown that the "fair cash value of complainant's shares are $230 per "share of $100."

The allegation of the bill is, that "the market value "of said stock (twelve national banks), as well as its fair "cash value, ranged from par or one hundred dollars per "share to two hundred and thirty dollars per share on the "first day of May last, which values were well known to "the world and to the assessor, notwithstanding which "said assessor assessed them at from one-third to one- "seventh of their actual and fair cash value," etc.

(*Printed Record, fol. 10.*)

It is hardly fair to assume that the stock of the complainant bank, which went into voluntary liquidation within six months, had the highest market value of any national bank in Chicago; on the contrary, the reasonable inference would be that such value did not exceed the par value. In either case, however, the inequality still existed, as the record shows. At the higher figure, the assessed valuation would be something over 14 per cent., while the moneyed capital of private bankers was assessed at about 5 per cent., and the shares of stock of state banks not at all. The statement of counsel that the assessed valuation of national bank stock, upon the assumption that the fair cash value was $230 per share, amounts to but .0676 per cent. of such last mentioned value, is manifestly erroneous. Counsel should make a new computation and revise his figures.

The objection is also made by counsel for appellee, that the allegations of the bill as to personal property liable to assessment in South Chicago, are mere hearsay, and are not stated with such directness and positiveness as to entitle them to consideration.

(*See Appellees' Brief, p. 26.*)

Our answer is, that all of the allegations of the bill as to what the assessor *did*, are derived from his assessment rolls. The matters and things which, by statute, he was required to do, and which he left undone; the property which he fraudulently and intentionally omitted from the assessment roll; the assessment of certain kinds of property in classes, upon arbitrary standards of his own, without reference to and in violation of the statutory rule of the fair cash value; the failure to include "moneyed capital in the hands of individuals;" all of these, and more, although capable of being proved upon the trial, from the nature and circumstances of the case, can only be pleaded upon information and belief. Being so pleaded, and admitted by the demurrer, it does not lie in the mouths of the appellees to say that the statement of facts contained in the bill is not true as alleged.

By way of excusing the failure of the assessor to assess shares of stock in state banks, counsel for appellees states that the tangible property of National banks is exempt from taxation, while its shares of stock are taxed, and that the tangible property of state banks is taxed while its shares of stock are not, although required by law to be; and he claims, for these reasons, that the assessments are uniform and stockholders of national banks have no just ground of complaint. He seems to have entirely overlooked *Sec. 5214 of the U. S. Rev. Stat.*, which reads as follows:

"*In lieu of all existing taxes* every association shall "pay to the Treasurer of the United States, in the "months of January and July, a duty of one-half of one "per centum each half year upon the average amount of

" its notes in circulation, and a duty of one quarter of one " per centum each half year upon the average amount of " its deposits, and a duty of one quarter of one per centum " each half year on the average amount of its capital " stock, beyond the amount invested in United States " bonds."

And that it is further provided in section 5219 of said statutes, that " nothing herein shall be construed " to exempt the real property of associations from either " State, county or municipal taxes to the same extent, " according to its value, as other real property is taxed."

In view of these provisions of law, can it be claimed, with any propriety, that the law even as it exists, has been complied with, or that shares of stock in national banks have been assessed at no greater rate than other moneyed capital in the hands of individuals, even though it should be conceded that " other moneyed capital," as used in the statute, means simply actual money or shares of stock in state banks held by individuals.

The term " moneyed capital," however, has a much broader significance than actual money or certificates of stock in state and national banks. A share of stock in a bank is not money, or even the representative of money, in the sense in which that expression is ordinarily used; nor does its value necessarily depend upon the amount of ready cash in the vaults of the bank. A corporation is an entity; the franchise and tangible property belong to it, and not to the individuals who organized it, or who hold its stock. The value of its shares is not wholly dependent upon the amount of its tangible property, or the value of its franchise, but is more or less affected by the degree of prudence, skill and economy with which its affairs are managed, which directly tend to increase or diminish, as the case may be, the amount of dividends declared, and so increase or diminish the value of the stock itself. It is a well-ascertained fact that some corporations are so well handled that their shares of stock in the hands of individuals are worth twice or three times as much as the whole

of its assets of every description. We claim, therefore, that all shares of stock held by individuals in any corporation organized and carried on for pecuniary profit, are "moneyed capital" in their hands, and must be treated as such for the purposes of assessment and taxation. Can any good reason be given why shares of stock in a bank, state or national, should be treated as "moneyed capital," and liable to assessment as such, while shares of stock in an insurance or railroad company are assumed not to be "moneyed capital" in the hands of individuals, and are specifically exempted from taxation? Indeed, an insurance company may be said to be quite as much of a moneyed corporation, and is so recognized in law, as a bank. Although insurance is its primary object, yet its resources are cash; it loans money, invests in stocks and bonds, etc.

2 *Bouvier's Law Dictionary*—"*Moneyed Corporations.*"

Can there be any doubt but that a law which provides that shares of stock in state and national banks shall be assessed, and which exempts from taxation shares of stock in all other corporations organized under the laws of the state of Illinois, would be void, not only because it conflicts with the restriction of the national banking law, that shares of stock in national banks shall be taxed as "other moneyed capital in the hands of individuals," but also because it is in direct violation of the principles of uniformity required by the constitution of that state?

This brings us to the consideration of a question not hitherto discussed by us, but which fairly arises upon the pleadings in this case, and we now present to the court the following additional point:

THE TAXES IN CONTROVERSY ARE FRAUDULENT AND VOID BECAUSE THE ASSESSMENT UPON WHICH THE SAME IS BASED IS MADE UNDER A LAW OF THE STATE OF ILLINOIS, WHICH IS UNCONSTITUTIONAL AND VOID, AND WHICH IS IN VIOLATION OF THE PROVISIONS OF THE NATIONAL BANKING LAW.

If this point be well taken, the argument of appellees' counsel virtually concedes, that under the Illinois decisions the appellant is entitled to the relief for which it seeks, and that the collection of the taxes in controversy should be enjoined.

(*See Appellees' Argument, p. 18.*)

The attention of the court is called to sections 1 and 2 of article IX. of the constitution of Illinois, entitled "Revenue."

(*See pages 7 and 8, Appellees' Argument.*)

Section 3 of Article IX. reads as follows:

"The property of the state, counties and other municipal corporations, both real and personal, and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, may be exempted from taxation; but such exemption shall be only by general law.

"In the assessment of real estate incumbered by public easement, any depreciation occasioned by such easement may be deducted in the valuation of such property."

The foregoing is the only provision of the constitution conferring any authority upon the legislature to exempt property from taxation.

Section 1 of chapter 120 of the Revised Statutes of Illinois, entitled "Revenue," reads as follows:

"That the property named in this section shall be assessed and taxed, *except so much thereof as may be in this act exempted.*

"*First*—All real and personal property in the state.

" *Second*—All moneys, credits, bonds or stocks, and " other instruments, the shares of stock of incorporated " companies and associations, and all other personal prop- " erty, including property *in transitu* to or from this state, " used, held, owned or controlled by persons residing in " this State.

" *Third*—The shares of capital stock of banks and " banking companies doing business in this state.

" *Fourth*—The capital stock of companies and asso- " ciations incorporated under the laws of this state."

Section 2 of the same act purports to give the classes of property exempt from taxation.

Section 3 of the act is contained in our former brief. (See p. 15.)

We call the attention of the court particularly to the following language contained in that section.

" PROVIDED, *That in all cases where the tangible* " *property or capital stock of any company or association is* " *assessed under this act, the shares of capital stock of any* " *such company or association shall not be assessed or taxed* " *in this State.*"

We have already fully quoted upon page 9 of our former brief, section 5219 of the U. S. Rev. Stat., relating to assessment of shares of national banking associations, and also section 35 of the revenue law of Illinois upon the same subject, and need not repeat them.

The provisions of the Illinois constitution, and of the statutes, state and national, above quoted or referred to, contain all that we rely upon in support of the point under discussion.

The question raised by us has never been passed upon, and, so far as we know, has never been presented to any of the courts of Illinois for consideration.

The effect of the revenue law of Illinois is to exempt from taxation all shares of stock of all corporations whose tangible property or capital stock is assessed under that law, except banks organized under the general banking laws of that State, in clear violation of the constitutional provision that taxes shall be levied " by valuation, so that

"every person and corporation shall pay a tax in propor-
"tion to the value of his, her, or its property." There can be no escape from this conclusion, unless it should be held that such shares of stock are not property. If that should be claimed or held, then one of two things must be conceded: either that bank stock is not property, and therefore not liable to taxation, or else that there is some mysterious and unexplainable difference between bank stock and railroad stock, which makes the former property and liable for taxes, and the latter not. If we go a step further, the unconstitutionality, not to say rank injustice of this law, becomes still more apparent. A. and B. are both residents and tax-payers of the state of Illinois. A. holds one thousand shares of stock in the Chicago and Alton Railroad Company, which is an Illinois corporation, and whose tangible property is taxed in that state; B. holds one thousand shares of stock in the New York Central, a corporation of and whose tangible property is taxed in the state of New York. The revenue law of the State of Illinois says that A.'s stock shall not be assessed or taxed, but B.'s stock shall be; and yet A.'s stock might be far the more valuable. By such a law, is not the principle of uniformity required by the constitution violated, and property exempted from the burdens of taxation which, under the constitution, the legislature has no power to exempt? Is it not apparent that the legislature, by the force and operation of this law, has made an intentional and fraudulent discrimination between tax-payers, and placed it utterly out of the power of the assessors, if they were so inclined, to make a just, equal and uniform assessment so that each person should pay a tax in proportion to the value of his property?

With this law before him, it almost ceases to be a matter of surprise that that the assessor of South Chicago was unable to find more than five thousand dollars of stock and bonds in the hands of individuals in that town. He was prohibited from assessing shares of stock in any of the

insurance, gas, railroad, steamboat, transportation, or manufacturing companies organized under the laws of or doing business in the state of Illinois, whose tangible property or capital stock had been assessed under the revenue law. The legislature exempts them all. The assessor relieved the State banks upon that score by neglecting to assess shares of stock held by its stockholders, as by law he was required to do—the shares assessed by him, to the extent of $5,000, are presumably those of foreign corporations. Virtually, no shares of stock, of any description, were assessed as the property of any one, except national bank stock.

We can give no better illustration of the injustice and inequality of the assessment, and the law under which it was made, than to call the attention of the court to the assessment of the Chicago Gas and Coke Company referred to in the bill.

(*See Printed Record, fol. 18.*)

Its tangible property was assessed at $120,000; its capital stock or franchises not at all. Its capital stock was upwards of one million dollars; its shares of stock of $100 each were worth in the market $140 per share. None of it was assessed; the legislature had said it should not be. Fourteen hundred thousand dollars of moneyed capital in the hands of individuals, as we say, wholly escaped taxation, because the law, which we claim for that reason to be unconstitutional, had so provided.

This is but one of a thousand illustrations that might be given of the unjust and unequal operation of the law. One more will suffice.

By the revenue law, shares of stock in state and national banks are liable to taxation. The methods of ascertaining the names of stockholders and making assessments are precisely the same in each case. The tangible property of state banks is also liable to taxation. Outside of the banks, the shares of stock of all corporations, whose tangible property is taxed, cannot be assessed.

A. owns one hundred shares of stock in the First National Bank of Chicago; B. owns one hundred shares of stock in the Merchants' Savings, Loan and Trust Company, a State bank, and C. owns one hundred shares of the Chicago Gas and Coke Company, or the Traders' Insurance Company, both Illinois corporations. Assume that the shares of stock in these corporations are of equal value, how are the holders of the respective shares affected by the law, and the acts of the assessor under or in violation of it? The national bank pays its duties to the general government in lieu of all taxes except upon real estate. A., its stockholder, is compelled to pay taxes upon his shares of stock; the state bank pays taxes upon its tangible assets; by the fraudulent acts or omissions of the assessor, or his willful disregard of the law, B. is relieved from taxation upon his shares of stock; the gas or insurance company pays taxes upon its tangible property, and in the case of C. the law itself steps in and relieves him from the burden of taxation upon his shares. The result is that only the holder of national bank stock is taxed upon his shares, and it can make but little difference whether other shareholders are relieved by force of the revenue law, or by the fraud of the assessor. He is defrauded in either case.

It seems perfectly clear that no assessment can be made in compliance with the revenue law of Illinois without violating the constitution of that state; and on the other hand, that no equal and uniform assessment can be made, such as the constitution requires, without disregarding some of the positive provisions of the statute. In that event, one or the other must fall, and there can be no question as to which it should be; the statute must be held unconstitutional.

We have already given our reasons for claiming that the revenue law conflicts with the restrictions of the na-

tional banking law as to taxation of national bank shares, and insist that the assessment should be held void for that reason.

The position of counsel that a court of equity will not interfere and set aside a tax on the ground of informality or irregularity, is well taken. If we have failed to show that the law under which the assessment is made, is unconstitutional, that it is in conflict with the national banking law, that its provisions are unequal and unjust, that the acts of the assessor are much worse than the law itself, and that the assessment complained of violates the constitutional rule of uniformity and the law under which it purports to be made, and that it is a GROSS FRAUD upon the appellant and its stockholders, we ask for no relief from this court, and shall expect none.

D. K. TENNEY AND
J. M. FLOWER.
Counsel for Appellant.

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STATEMENT.

This was a bill for an injunction against taxes levied on the shares of a national bank. A general demurrer was sustained and the bank appealed.

The defendants are the collectors of taxes of the town of South Chicago, which is one of the three towns whose aggregate territory is the same as the limits of the city of Chicago.

All of the material allegations of the bill are admitted by the demurrer.

Such admissions are to be construed in the light of the decisions of the State of Illinois, and are not to be measured by the inference drawn from such allegations in appellant's argument.

Assessors act judicially in Illinois. From their decision an appeal is taken to the Board of Review. Equalizing boards control their action. If the assessment should be improper in any town the county board may order a new assessment.

The demurrer was sustained upon the grounds of the judicial character of assessments and of the ample remedies at law to cure the evils of which complaint was made and of which the appellant neglected to avail itself. And, also, because the bill shows upon its face that all property was assessed too low, including the bank, and the argument is urged that the assessment is void on that account, but the Court held, as the bank did not suffer thereby, it could not complain.

As the appellant has not made a concise abstract of its case, "presenting succinctly the questions involved and the manner in which they are raised," we shall try to do so.

ABSTRACT OF CASE.

This suit was commenced February 16th, 1878, in the Circuit Court of the Northern District of Illinois by filing a bill for an injunction against Mark Kimball, collector of taxes of the town of South Chicago (R., p. 3.) A supplemental bill shows that the tax warrant to Kimball by operation of law was returned to Samuel H. McCrea, the county collector of Cook county, who is the real defendant (R., p. 35.) The orator is a national bank, having its office and place of business in the town of South Chicago; chartered capital, $500,000, divided into five thousand shares of $100 each, held by seventy stockholders; that all of said shares of stock were duly listed for assessment and taxation in the name of its stockholders, and taxes levied amounting to $13,543.15 (R., p. 4.)

The revenue law of Illinois makes it the duty of the managing officer of a national bank to withhold from dividends all taxes, &c. (R., p. 5.)

Complainant has gone into voluntary liquidation and holds one hundred and fifty shares of stock. Its assets equal its liabilities (R., p. 6.) The constitution of Illinois provided for "*levying a tax by valuation*," and the statutes that the assessor "*shall assess all personal property at its fair cash value.*" (R., p. 7.)

Gray was elected, qualified and acted as assessor of the town of South Chicago for A. D. 1877, and made what "purported

"to be a legal and uniform assessment and valuation of all the "personal property in the town of South Chicago for said year." Affidavit of assessor made in discharging his duty that he made a valid assessment. (R., p. 8.)

Complainant says that the asssessor did not assess personal property "at its fair cash value, and set up an arbitrary stand-"ard of value of his own in opposition thereto, and did not "assess nor intend to assess any of such property as to exceed "one-third of its fair cash value, and that in fact he assessed the "most of it at from one-fifth to one-twentieth of its fair cash "value (R, p. 9.) And that as to other provisions of said law "requiring property owners to list their personal property and "make returns thereof under oath, he purposely waived and "ignored the same so that one-half of such property escaped "taxation altogether; that not more than one-half of the tax-"payers of said town made returns at all, and of the returns "that were made many were not signed by the parties making "them and a still greater number were not sworn to." (R., p. 10.)

(No point is made on defective returns in appellant's brief.)

Twelve national banks are in South Chicago. Eleven had their shares assessed at 34 per cent. and one at 23 per cent. of their face value. "The market value of said stock of the twelve national banks as well as their fair cash value, ranged from par or $100 per share to $230 per share" when assesed (R., p. 11.) (We urge it fair to claim that complainant's shares were worth $230 each, and on such fair cash value are assessed at .0676.)

State banks assessed (R., p. 11): "That said assessment, instead of being an assessment of the moneys, credits and effects

of said banks * * * at their fair cash value, is so far below it as to be absolutely absurd and ridiculous."

That none of said shares of stock are assessed, "but on the contrary the said assessor wilfully and intentionally omitted the same from his assessment roll and neglected to assess and return the same, and that the capital stock and franchises of said banks were none of them assessed in any manner or form whatever and wholly escaped taxation, although publicly known to be of the value of many millions of dollars. "The total assessed valuation of the banks in said town (other than national) does not much, if at all, exceed 10 per cent. of the fair cash value of their tangible property, capital and franchises * * * and therefore an unjust, unreasonable, illegal and fraudulent discrimination has been made by the authorities between the shareholders of state banks and national banks," &c.

There were eighteen private bankers assessed at 5 per cent. on their property [R., p. 14.] Three hundred and nine vessels assessed at one-tenth of their value [R., p. 15.] The assessor accepted the statement of owners as to the value of their property. A table shows the bulk of such property. (The average in the table like Field & Leiter and A. T. Stewart show an assessment of one-tenth of the value.) The allegations of the bill which dispute the figures are one-fifth to one-twentieth.

Corporations assessed at one-third and some not to exceed one-tenth [R., p. 18.]

A mere fraction of the cash on hand of bankers and merchants was assessed [R., p. 19.]

"It fully and clearly appears that in many respects the "assessments made in the county of Cook (consisting of thirty-

"three towns), in which the town of South Chicago is situated, "are not only fraudulent and void as to their respective localities "and the inhabitants and taxpayers thereof, but are likewise a "fraud upon every other locality in the State." (It is alleged in detail that the assessment of Cook County is a fraud upon Illinois) [R., p. 20.]

The State Board of Equalization added to Cook County assessment 57 per cent. to equalize it. The County Clerk (in fact the County Board) added 20 per cent. to the assessment of South Chicago without authority of law †

"And your orator charges and insists that the assessment of said town, instead of being made in accordance with the revenue laws of said state and pursuant to its provisions was wilfully, deliberately and fraudulently made in direct violation thereof; that the said assessor, instead of adopting the rules and standard prescribed by law for ascertaining the amount of property in said town and determining the values thereof [R., p. 25], purposely disregarded the same and fraudulently set up a standard of values of his own on which to make such assessment in direct violation of such law; that because of his wilful disregard and disobedience of some of the provisions, and his deliberate and intentional violation of others of said revenue law, more than one-half of the personal property of said town escaped taxation altogether, and the remainder is assessed upon a shifting, varying and uncertain basis or standard of values, dependent largely upon the whims, caprices, integrity, or want

† This amount, together with the increase of 57 per cent. aforesaid, amounts to one-sixth of the entire tax [R., p. 23], which tax we admit to be illegal under the decision of Kimball v. Merchants' Loan and Trust Company, 89 Ill., 611. [See page — of our brief]

of integrity of the owners, instead of the standard of the fair cash value as required by law and the judgment of the assessor." [R., p. 26.]

That the law makes an assessment jurisdictional, and that this assessment, not being on its fair cash value, is void [R., p. 27.]

"And your orator further shows that because of the non-"assessment of large quantities of personal property in said "town, and the absence of all uniformity of val es in the assess-"ments that were made, it is utterly impossible for your orator "to compute or ascertain what your orator ought to pay upon "an approximately fair and equitable assessment of the personal "property in said town. * * * As said assessment is void "it ought not equitably to pay any sum as a condition of relief." [R., p. 27.]

The assessment is void because

1. Property not assessed "at its fair cash value."

2. Not uniform.

3. The assess r purposely and fraudulently omitted and neglected to assess and return one-half of the property. [R., p. 28.].

The taxes of complainant void because of these additional reasons:

1. Because shares of state banks were not assessed.

2. Such shares not assessed and taxed as other moneyed capital.

Prayer for an injunction. [R., p. 29.]

And summons and answer. [R., p. 30.]

Affidavit to bill "that the same is true of his own know-"ledge except as to the matters herein stated on information "and belief and as to those matters he believes it to be true."

RECAPITULATION OF CASE.

The constitution and statutes of Illinois require property to be assessed at "its fair cash value."

The assessor made an assessment at one-third of such value (some at less, but the quantity is undefined, so we disregard it.) The shares of this national bank were assessed thirty-four per cent. of their face value. Their fair cash value being $230, the assessment was $\frac{17}{1}\frac{7}{8}$, or .0676 of such fair cash value Other banks were assessed at one-tenth, private bankers at .05. The table of large merchants shows an assessment of one tenth. Corporations assessed at one-third, some not to exceed one-tenth. (Frauds upon the state, because Cook county, including thirty three towns, was assessed too low, should not be considered.) Property escaped taxation. We urge that appellant has escaped taxation equally with the balance of property in Cook county, and therefore shows no equity by his bill.

THE CONSTITUTION OF ILLINOIS PROVIDES:

Article 9.

Sec. 1. The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property, such value to be ascertained by some

person or persons, to be elected or appointed in such manner as the general assembly shall direct, and not otherwise; but the general assembly shall have power to tax peddlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, inn-keepers, grocery keepers, toll bridges, ferries, insurance, telegraph and express interests or business, vendors of patents, and persons or corporations owning or using franchises and privileges, in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates.

Sec. 2. The specification of the objects and subjects of taxation shall not deprive the general assembly of the power to require other subjects or objects to be taxed in such manner as may be consistent with the principles of taxation fixed in this constitution.

Sec. 7. All taxes levied for state purposes shall be paid into the state treasury.

Sec. 8. County authorities shall never assess taxes the aggregate of which shall exceed 75 cents per $100 valuation, except for the payment of indebtedness existing at the adoption of this constitution, unless authorized by a vote of the people of the county.

Sec. 9. The general assembly may vest the corporate authorities of cities, towns and villages with power to make local improvements by special assessment, or by special taxation of contingent property, or otherwise. For all other corporate purposes all municipal corporations may be vested with authority to assess and collect taxes, but such taxes shall be uniform in respect to persons and property, within the jurisdiction of the body imposing the same.

Sec. 10. The general assembly shall not impose taxes upon municipal corporations, or the inhabitants or property thereof, for corporate purposes, but shall require that all the taxable property within the limits of municipal corporations shall be taxed for the payment of debts contracted under authority of law, such taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same. * * *

THE STATUTES OF ILLINOIS PROVIDES:

Rules for Valuing Personal Property.

"Personal property shall be valued as follows: First—All "personal property, except as herein otherwise directed, shall be "valued at its fair cash value." * * * Revenue Law of Illinois, p. 3: Personal property shall be listed in the manner following: * * * Eighth—The property of a body politic or corporate by the president or proper agent or officer thereof. * * * [Ibid., § 6.]

The personal property of banks or bankers, brokers, stock jobbers, insurance companies, hotels, livery stables, saloons, eating houses, merchants and manufacturers, ferries, mining companies, and companies not specially provided for in this act shall be listed and assessed in the county, town, city, village, or district where their business is carried on, except such property as shall be liable to assessment elsewhere in the hands of agents. * * * [Ibid., § 13.]

The stockholders in every bank located within this State, whether such bank has been organized under the banking laws of this State or of the United States, shall be assessed and taxed on the value of their shares of stock therein, in the county, town,

district, village or city where such bank or banking association is located, and not elsewhere, whether such stockholders reside in such place or not. Such shares shall be listed and assessed with regard to the ownership and value thereof, as they existed on the first day of May, annually, subject, however, to the restriction that taxation of such shares shall not be at a greater rate than is assessed upon any other moneyed capital in the hands of individual citizens of this State, in the county, town, district, village or city where such bank is located. The shares of capital stock of national banks not located in this State, held in this State, shall not be required to be listed under the provisions of this act. [Ibid., § 35.]

In each such bank there shall be kept at all times a full and correct list of the names and residences of its stockholders, and of the number of shares held by each; which list shall be subject to the inspection of the officers authorized to assess property for taxation; and it shall be the duty of the assessor to ascertain and report to the county clerks a correct list of the names and residences of all stockholders in any such bank, with the number and assessed value of all such shares held by each stockholder. [Ibid., § 36.]

The county clerk, to whom such returns are made, shall enter the valuation of such shares in the tax lists, in the names of the respective owners of the same, and shall compute and extend taxes thereon the same as against the valuation of other property in the same locality. [Ibid., § 37.]

The collector of taxes, and the officer or officers authorized to receive taxes from the collector, may, all or either of them, have an action to collect the tax assessed on any share or shares of bank stock from the avails of the sale of such share or shares;

and the tax against such share or shares shall be and remain a lien thereon till the payment of said tax. [Ibid., § 38.]

For the purpose of collecting such taxes, it shall be the duty of every such bank, or the managing officer or officers thereof, to retain so much of any dividend or dividends belonging to such stockholders as shall be necessary to pay any taxes levied upon their shares of stock, respectively, until it shall be made to appear to such bank or its officers that such taxes have been paid; and any officer of any such bank who shall pay over or authorize the paying over of any such dividend or dividends, or any portion thereof, contrary to the provisions of this section, shall thereby become liable for such tax; and if the said tax shall not be paid, the collector of taxes where said bank is located shall sell said share or shares to pay the same, like other personal property. And in case of sale the provision of law in regard to the transfer of stock when sold on execution, shall apply to such sale. [Ibid., § 39.]

Every assessor or deputy assessor, before entering upon the duties of his office, shall take and subscribe the oath required by the constitution. [Ibid., § 74.]

The assessor or his deputy shall, also, between the first day of May and July, proceed to make a list of taxable personal property in his county, town or district, and assess the value thereof in the manner following, to wit: He shall call at the office, place of doing business, or residence of each person required by this act to list property, and list his name, and shall require such person to make a correct statement of his taxable property, in accordance with the provisions of this act; and the person listing the property shall enter a true and correct statement of such property, in the form prescribed by this act, which

shall be signed and sworn to, to the extent required by this act, by the person listing the property, and delivered to the assessor; and the assessor shall thereupon assess the value of such property, and enter the same in his books: *Provided*, if any property is listed or assessed on or after the first day of July, and before the return of the assessor's books, the same shall be as legal and binding as if listed and assessed before that time. [Ibid., § 78.]

In all cases of failure to obtain a statement of personal property, from any cause, it shall be the duty of the assessor to ascertain the amount and value of such property, and assess the same as he believes to be the fair amount and value thereof. [Ibid., § 83.]

In counties under township organization, the assessor, clerk and supervisor of the town shall meet on the fourth Monday of June, in the year eighteen hundred and eighty, and every fourth year thereafter, for the purpose of reviewing the assessments of real and personal property in such town. And on the fourth Monday of June, in every year, for the purpose of reviewing and correcting the assessment of personal property, and of improvements upon real property made or destroyed. And on the application of any person considering himself aggrieved, or who shall complain that the property of another is assessed too low, they shall review the assessment, and correct the same as shall appear to them just. No complaint that another is assessed too low shall be acted upon until the person so assessed, or his agent, shall be notified of such complaint, if a resident of the county. Any two of said officers meeting, are authorized to act, and they may adjourn from day to day until they have finished the hearing of all cases presented on said day. Property assessed after the fourth Monday of June shall be sub-

ject to complaint to the county board, subject to the rules specified in this section. [Ibid., § 86.]

The county board, at a meeting to be held for the purpose contemplated in this section, on the second Monday in July, annually, after the return of the assessment books, shall—

First—Assess all such lands or lots as have been listed by the county clerk, and not assessed by the assessor. Said board may make such alterations in the descriptions of real property as it shall deem necessary.

Second—On the application of any person considering himself aggrieved, or who shall complain that the property of another is assessed too low, they shall review the assessment and correct the same as shall appear to be just. No complaint that another is assessed too low shall be acted upon until the person so assessed or his agent shall be notified of such complaint, if a resident of the county.

Third—To hear and determine the application of any person who is assessed on property claimed to be exempt from taxation. If the board shall decide that any such property is not liable to taxation, and the question as to the liability of such property to taxation has not been previously determined, as hereinafter provided, the decision of said board shall not be final, unless approved by the auditor of public accounts; and it shall be the duty of the county clerk, in all such cases, to make out and forward to the auditor a full and complete statement of all the facts in the case. If the auditor is satisfied that such property is not legally liable to taxation, he shall notify the clerk of his approval of the decision of the board, and the said clerk shall correct the assessment accordingly. But if the auditor is satis-

fied, that such property is liable to taxation, he shall advise the clerk of his objection to the decision of the board, and give notice to said clerk that he will apply to the supreme court in either division, specifying at what term thereof, for an order to set aside and reverse the decision of the county board. Upon the receipt of such notice, the clerk shall notify the person making the application aforesaid. It shall be the duty of the auditor to file in the supreme court a certified statement of the facts certified by the clerk, as aforesaid, together with the objections thereto, and the court shall hear and determine the matter as the right of the case may be. If the board shall decide that property so claimed to be exempt is liable to be taxed, and the party aggrieved shall at the time pray an appeal, a brief statement in the case shall be made by the clerk, and transmitted to the auditor, who shall present the case to the supreme court in like manner as hereinbefore provided. In either case, the collection of the tax shall not be delayed thereby, but in case the property is decided to be exempt, the tax shall be abated or refunded.

Fourth—It shall ascertain whether the valuation in one town or district bear just relation to all the towns or districts in the county; and may increase or diminish the aggregate valuation of property in any town or district, by adding or deducting such sum upon the hundred as may be necessary to produce a just relation between all the valuations of property in the county, but shall, in no instance, reduce the aggregate valuation of all the towns or districts, below the aggregate valuation thereof, as made by the assessors; neither shall it increase the aggregate valuation of all the towns or districts, except in such an amount as may be actually necessary and incidental to a proper and just equalization. It may consider lands, town or

city lots, personal property, and railroad property (except "railroad track" and "rolling stock") separately, and determine a separate rate per cent. of addition or reduction for each of said classes of property, as may be necessary to a just equalization of the assessed value of said classes of property within the respective towns, and of the same between the several towns or districts in the county. *If the county board of any county shall find the aggregate assessment of the county is too high or too low, or is generally so unequal as to render it impracticable to equalize such assessment fully, they may set aside the assessment of the whole county or of any township or townships therein, and order a new assessment, with instructions to the assessors to increase or diminish the aggregate assessment of such county or township, as the case may be, by such an amount as said board may deem right and just in the premises, and consistent with this act.* [Ibid, § 97.]

The statutes provide for an equalization of taxes as between counties and certain classes of property by a state board of equalization. [Ibid., § 100 to 116.]

I.

We do not question the right of a national bank to file a bill in equity as the trustee of and in behalf of its stockholders.

Where such bank is in liquidation it can be questioned whether suit can be maintained in its name at least without an allegation of 383) its legal status. (Bank of Bethel vs. Pahquioquo Bank, 14 Wall. (Perhaps the allegation in the bill that it is in liquidation may cure this.)

II.

The form of remedy by bill for an injunction we do not

question, yet it is pertinent to inquire whether the facts warrant any relief. It will be profitable to learn under what circumstances the writ of injunction has been granted and refused in the courts of Illinois.

A bill for an injunction to restrain the collection of a tax has been held by the courts of Illinois to lie under the following circumstances: Where property taxed was not in Illinois, as a boat having its home port in Iowa. [Irvin vs. R. R., 94 Ill. 105.] Where back taxes are extended upon the assessment of the current year. [Lebanon v. R. R., 77 Ill. 539.]

Where a party liable to taxes makes out and delivers to the assessor a list of his taxable property which is accepted by the assessor without question, that officer has no power of his own motion to alter it without first giving the party assessed notice, and if without notice he increases the tax, equity will enjoin such excess. [Cleghorn vs Postlewaite, 43 Ill. 428; Darling vs. Gunn, 50 Ill. 424; McConkey vs. Smith, 73 Ill. 313; Bank v. Cook, 77 Ill. 622.]

Cases cited by appellant in his second point:

Creole v. Chicago, 56 Ill. 423, held in a special assessment that the city could not include improvements made by it.

The case of Southerin v. Chicago, 56 Ill. 429, was similar.

The ordinances of Chicago under which the assessments were made expressly provided for a hearing showing whether property was properly assessed.

INJUNCTIONS *will not be granted* unless it is clearly made to appear that the party has been wrongfully assessed, and will

sustain irreparable injury unless the collection of the tax be enjoined. [Porter v. R. R., 76 Ill. 596.]

A court of equity has no power to restrain the collection of a tax for irregularities and informalities in its assessment and levy.

[McBride v. Chicago, 22 Ill. 574.]
[Mety v. Anderson, 23 Ill., 463.]
[Peoria v. Kidder, 26 Ill. 351.]

Upon a careful examination of all the elementary treatises on equity jurisprudence, as well as the adjudged cases to which we have had access, we do not find that a court of equity has assumed jurisdiction to enjoin a tax for mere errors in its assessment or the collector's warrant, in case it was levied by officers *de facto* whose authority to levy such a tax was incident to their office. And it is believed the cases are rare even when the tax had been levied by persons having no pretence of legal authority to make such a levy, or in cases where the tax was not authorized by law, or where the warrant for its collection was void, that courts have interfered to stay its collection. In the few cases that we have found where relief was granted, no question as to jurisdiction was raised. No rule is more familiar than that courts of equity will not interpose to give relief in cases where the party has a full and complete remedy at law, unless it be where the jurisdictions are concurrent.

If courts of equity were to entertain jurisdiction and enjoin the collection of taxes, in all cases in which mere informalities and irregularities have occurred in their assessment and levy, it would lead to great delay in their collection, and tend seriously to embarrass every department of the government, whether of

state, county, town or city, and would render the operation of the school system very precarious. While, if the party feeling himself aggrieved, is left to his remedy at law, such inconveniences will not be felt. And even if we had the power to assume jurisdiction to grant relief when we see that its exercise would lead to such embarrassment in the finances of these various departments of our municipal polity, we should hesitate long before assuming the exercise of such a power. But we conceive that a court of equity is vested with no such power.

[Munson v. Miner, 22 Ill., 601-602.]

Nor will the court permit the inquiry to be made on a bill for an injunction, whether the body imposing the tax is legally organized and continues to exist as such a body. All that will be regarded is the fact that there is such a body *de facto*, having power, if legally organized, to levy the tax.

Until a comparatively recent date, chancery never took jurisdiction to restrain the collection of taxes, hence such power has not found a place in works on equity jurisdiction, and its exercise is only in cases where the officers exceed their power and levy where they can under the law, levy no such tax, because the tax is not authorized by the law; or when the persons attempting to make the levy are not officers *de jure* or *de facto;* or when the tax is levied on property wholly exempt; or when the law under which it is levied violates the rule of uniformity and is therefore unconstitutional. These are the grounds upon which our courts of chancery proceed in taking jurisdiction in such cases, and public policy forbids that the jurisdiction of the court should be extended beyond these enumerated cases.

[Nunda v. Chrystal Lake, 79 Ill., 314.]

III.

We admit that the third point of appellant is well taken and that one-sixth of the personal property taxes levied and assessed in the town of South Chicago for the year 1877 are illegal and void.

Because the County Board in equalizing the taxes between the towns in the county of Cook added twenty per cent. to the personal property of said town of South Chicago. The jurisdiction of said County Board consisted in equalizing the taxes between the towns of the county in such way that the total assessment should not be changed. The defect practically in the case at bar consisted in the County Board increasing the personal property tax twenty per cent. or one-fifth in the town of South Chicago [See. R., p. 23] without equalizing such increase by deducting the amount of such increase from the property in that or other towns. And the State Board added 57 per cent. to such illegal per cent. [See R., p. 23] making one-sixth of the tax illegal as held in Kimball v. Merchants' Saving, Loan and Trust Company, 89 Ill., 611, cited by appellant, which merely followed the principles declared in the following cases:

A board of supervisors are not authorized by law to add a certain sum to each acre of land in a township in equalizing the assessments of real estate as between the townships of a county.

[State v. Allen, 43 Ill., 456.]

The only power the Board of Supervisors have over the assessment roll is, to ascertain if the valuation in one town bears a just relation to all the towns in the county, and if it does not, the statute authorizes the board to increase or diminish the aggregate valuation of the property in any town by adding or

deducting such sum as may in their opinion be necessary to produce such relation. [People v. Nichol, 49 Ill., 517.]

[Kimball v. Merchants' S. L. & T. Co., 89 Ill., 611]

A tax levied in excess of that authorized by law does not make the whole tax void, but only such portion of the tax as may be illegal. In such cases the Supreme Court of Illinois has uniformly held that the tax levied within the limit of the power will be sustained where it can be separated from the portion that is illegal. Mix v. People, 72 Ill., 241, where the Illinois Constitution A.D. 1870, Art. 9, Sec. 8, provides that the "county authorities shall never assess taxes the aggregate of which shall exceed 75 cents per $100 valuation." * * * And the excess of a tax beyond such constitutional limit only was held void.

In O'Kane v. Treat, 25 Ill., 557, 562, Court said: "It stands confessed that a portion of this tax is legally levied and for authorized purposes, and the complainants were bound, before relief could have been granted, to show what part was illegal, even if the law had not contravened the constitution. Until that is done, it would be uncertain whether a portion of the legal tax was not restrained, to do which would be manifestly wrong, and work great injustice."

In Briscoe v. Allison, 43 Ill, 291, head-note says: "Where a bill is filed to stay the collection of a tax levied to pay county orders issued for bounties, a portion of which are authorized and a portion unauthorized by law, the court should ascertain the amount the unauthorized bear to those authorized, and reduce the tax by the proportion the former bears to the latter.

and require the remainder to be collected and applied to the payment of those legally issued.

Where a tax is so levied that the legal can be separated from the illegal, judgment may be rendered against the taxes legally assessed. [People v. Nichols, 49 Ill., 517.]

[State v. Allen, 43 Ill., 456.]
[Allen v. R. R., 44 Ill., 85.]

IV.

We deny that the shares of stock of the complainant are charged "at a higher rate than is assessed upon the moneyed capital in the hands of individual citizens' in Illinois.

The allegations of the bill do not warrant an inference or conclusion that the assessment is excessive. Upon the face of the bill it is shown that "the fair cash value" of complainant's shares are $230 per share of $100, and are only assessed at 34 per cent. on the face of the shares $100, which make the assessment only .0676 of their "fair cash value."

The constitution and statutes of Illinois which have a bearing upon the mode and principles of assessment of personal property have been quoted in the main. There is no pretenee in the bill or argument that any constitutional or statutory provision conflicts with the act of Congress creating the national banks.

The sole cause of complaint in the bill consists in the allegations that the personal property in the town of South Chicago has been assessed at less than its "fair cash value."

The decisions of Illinois sustain the position that the assessment by "valuation," as required by the constitution, is made

when uniformity of value is attained. That is, if property be assessed at the same per cent. of its value, then the equality and uniformity required by the constitution of Illinois is satisfied. The property in question has been assessed far below what it should be, and at as low a rate as any property in Cook County. Such facts being established, it follows that no complaint will lie on behalf of the complainant.

He who seeks equity must do equity To obtain relief the complainant should pay its share of taxes assessed in the Town of South Chicago, and in doing this it must pay as much, if not more, than the taxes against which relief is sought. To find cause of complaint the bank is driven to the necessity of urging *that the entire assessment is void,* because its property, together with all other property, has not been assessed at its full "fair cash value" To reach such a result, the decisions of the Supreme Court of Illinois must be overturned. Such decisions have been long acquiesced in as the rules of law governing such matters.

That the logic of other Courts lead to a different conclusion can make no just ground of jurisdiction for equity. We are bound by the decided principles and policies in Illinois, and those of Wisconsin at best are to be used as mere illustrations.

We should follow the path of precedent as marked out by the Illinois Courts without reference to the decisions of other States

In Wisconsin it has been held, as shown in cases cited by the Appelle, that an assessment made upon one-third of the value of property was void. The constitution of Wisconsin requiring the tax to be "uniform," the statutes that the assess-

ment should be "at the full value which could ordinarily be obtained therefor at private sale." Schettler v. City of Fort Howard, 43 Wis., 48.

The very converse of these decisions have long been the law in Illinois, the intention being by the Revenue Law of Illinois to establish the principles of equality and uniformity.

Bureau Co. v. R. R., 44 Ill., 243.

The decisions of the Supreme Court of the United States from Ohio cited by Appellant, Cummings v. National Bank, 101 U. S., 153, and Pelton v. Commercial Bank, 101 U. S., 143, go only to the extent of deciding that where the assessors made it a rule to assess other property at a given rate as one-third its value and the shares of national banks at their full cash value, that such rule of the assessors and their assessment made under it was void as to the excess of such valuation over that rate applied to other property.

We are willing to abide by the principles enunciated by these decisions. They only hold what we admit to be the law that national banks should pay a tax precisely like other property where the bank is located.

In Ohio the national banks were assessed at their full value and other property at one-third its value; there all property is assessed below its "fair cash value," yet the national banks are assessed as low as any other property, therefore they have no right to cry out against any evil in such assessment, It appears from the bill that all tangible property of the State banks only are taxed, and that their shares were not taxed, and that the shares of national banks only and not their tangible property was taxed.

There is no inequality and want of uniformity involved in these facts, only a different mode of reaching the same result. The shares represent the tangible property, and such tangible property constitutes the value of such shares. If the tangible property was assessed then the assessment of the shares should be nominal or omitted altogether, and by such conduct justice alone could be obtained. Equality and uniformity of taxation under the constitution and revenue laws of the State of Illinois are admitted to be indispensable requisites. What do we mean by equality and uniformity? These are pertinent questions to be answered in the light of the decisions of the Supreme Court of Illinois. Such decisions construe the constitution and statutes and establish the principles of equality and uniformity as declared by the law and as executed by ministerial officers.

Let us examine the decided cases.

It is a fundamental principle of our government that all shall contribute to raising revenue for governmental purposes in proportion to the value of their property.

Hosmer v. People, 96 Ill., 58-61.

Chicago v. Larned, 34 Ill., 203, was a special assessment for "Nicholson pavement." Held, an assessment based on the frontage was void Breese, J., said: The framers of our constitution (A. D., 1848) have taken unexampled pains by these separate sections to affirm the principles of "equality" and "uniformity" as indispensable to all legal taxation, whether general or local.

Under the present constitution, that of 1870, sidewalks, etc., can be built at the expense of abutting property owners.

Equality and uniformity of taxation have been repeatedly recognized and enforced by this Court. They must be applied, not only to the rate of taxation, and to the district to be taxed, but also to all the property subject to taxation

Primm et al. v. City of Belleville, 59 Ill., 143.
Sherlock v. Winnetka, 68 Ill., 530.

This equality and uniformity are fixed, and certain rules which shall guide all officers in making assessments in levying and collecting taxes.

It is an equality and uniformity of principles which are required. No vain attempt is made to mould the opinions of all men into the same things, but only to have individual officers act in harmony with equal and uniform principles.

The bill assails the conduct of the assessor in making his assessment, and all of its evils are blunders of such assessor. It does not seek to show that any statute of Illinois attempts to interfere with the provisions of section 5219, Revised Statutes of U. S., which reads :

"Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares in assessing taxes imposed by authority of the State within which the association is located; but the Legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State."

The bill makes complaint of the acts of the assessor aver-

ring that they are wilful and fraudulent in particular instances as to other parties than complainant without showing that the section quoted has been violated in any way. The bill may be a good indictment against the assessor, but it fails to give this Court jurisdiction under Sec. 5219, Ib.

It fails to show that any evil reaches this bank which is not common to all property in the Town of South Chicago.

It alleges that the entire city of Chicago, consisting of the hree towns of South, West and North Chicago, compared with the rest of the State of Illinois does not pay its proper share of taxes From the averments of the bill it is seen and admitted that the bank fails to pay its proper share of taxes when compared with other property and "other moneyed capital in the hands of individual citizens of the State"

From such showing equity should grant no relief.

Its allegation is that the bank pays only 1-10 of its proper tax and its wholesale statements of the defects in the assessment of other property show that such allegations are mere hearsay. It shows that other banks not national and business firms upon personal property have been assessed about 1-10 of what should they be. It shows that the constitution of Illinois requires an assessment upon valuation, and the statutes upon cash value Yet their argument admits that the decisions of Illinois have construed such expressions to mean uniformity and equality in the assessment which they hold to be practically attainable if the depreciation of the assessment from cash value is uniform in all places and upon all property.

(See cases cited on p. 33, Appellant's brief.)

It does not appear from the bill that any rule was established by the assessor which violated the provisions of section 5219, Ib., or of the constitution or statutes of Illinois. The troubles which form the ground of complaint are want of faith in the opinions of the assessor in making the assessment.

The offendings hath this extent no more that measured by the judgment of Appellant's counsel the exercise of the assessor's judgment is impeached.

That different men should make different assessments under exactly the same state of facts is no more curious a problem than that candid experts in the value of particular pieces of property will vary thousands of dollars.

We all know that if, under such circumstances, a great variety of men do agree it is because each and all have promised to bend their views of value to some fixed and arbitrary rule to which, as a matter of policy, they have agreed to adhere.

The constitution only means to harmonize these conflicting consciences by letting the individual who may for the time being happen to be assessor exercise his judgment and discharge his duties untrammelled by any other restraint than good faith in his interpretation of value and good faith in executing the law.

V.

NATIONAL BANKS ARE FOREIGN CORPORATIONS.

The Legislature of Illinois has the power to impose taxation upon foreign corporations in its discretion as the condition upon which they shall be allowed to exercise their franchises and privileges in the State of Illinois.

Paul v. State of Va., 8 Wal., 168.
Western Union Tel Co. v. Leib, 76 Ill., 172.
Van Inwagen v. Chicago, 61 Ill., 31.
Ducat v. Chicago, 48 Ill., 172.

The only limitation upon such principle is found in R. S. U. S., which grows out of the nationality of our government.

In State of Conn., ex. rel., Wilcox v. Curtiss, 35 Conn., 374.

Held. An information, in the nature of a *quo warranto*, to try the right to the office of director in a bank organized under the national currency act will lie only in a proper Court of the United States.

Butler, J, said: "The power to create a corporation is an 'attribute of sovereignty, and the government of the United 'States created the corporation in question, in the exercise of 'that independent and supreme sovereign power which the 'people delegated to it by the constitution. It is, therefore, the 'creature of that sovereignty, and amenable to, and controlla-'ble by it, and by none other."

The principles proclaimed by the foregoing decisions are similar to section 3413, R. S U. S., that "every national banking association, State bank, or banker, or association, shall pay a tax of ten per centum on the amount of notes of any town, city or municipal corporation, paid out by them," which have been sustained.

Nat. Bk. v. U. S., 11 Otto, 1.
Veazie Bk. v. Fenno, 8 Wall., 533.

The following points, though not made in form by the Appellant, seems to be involved in a discussion of the principles

which should decide this controversy.

In Illinois it has been declared by statute and established by decisions that no defense shall be interposed to defeat any tax which does not show in some way that substantial merits of the tax are wanting. It will not do that some technical lawyer finds some technical flaw in some one of the many official acts which are necessary to assess, levy and collect the public revenues.

VI.

There being nothing in this record to affect the "substantial justice" of the tax it must be collected.

In Chiniquy v. The People, 77 Ill., 577, the Supreme Court of Illinois said: A careful examinalion of the record fails to show anything that affects the "substantial justice of the tax itself," and until that is shown, the Court must enforce its collection. The amendment introduced into the 191st section of the present Revenue Law, has produced a radical change in proceedings to recover judgment for delinquent taxes, and has overruled or modified most, if not all, of our previous decisions on the questions thus arising.

So in Buck v. The People, 78 Ill., 566. It is also urged that the local taxes were not levied and returned to the Clerk in time; and in support of the position, the case of Mix v. The People, 72 Ill., 241, is referred to as controlling this. That tax was levied under the law of 1872 whilst this is under the statute of 1873 which amends the prior law See section 191, p. 890, R. S., 1874. That section declares that "no error or informality in the proceedings of any of the officers connected with the assessment, levying or collecting of the taxes, not affecting the

substantial justice of the tax itself, shall vitiate or in any manner affect the tax or the assessment thereof." This provision most effectually disposes of this objection.

VII.

Burden of Proof.

The allegations of a bill properly pleaded are admitted to be true by filing a demurrer. The questions then arise, what facts are set up in the bill? What are the effects of such facts? Do they entitle the party to relief? Where rests the burden of proof? We must turn to the decisions in Illinois for a solution of these questions.

The burden of proof rests upon the complainant to show by his bill a clear case demanding relief.

Those who complain of an illegal assessment of taxes must show the fact affirmatively, if they desire relief.

O'Kane v. Treat, 25 Ill., 557
Walker v. Chicago, 56 Ill, 277.

And in the absence of his showing a case free from all doubt no relief should be granted. We invoke the aid of those familiar principles of construction which declare that legislation will be held constitutional unless clearly repugnant to some expressed provision of such constitution. The same idea is stated in quite different words, as follows: To doubt whether a law be constitutional or not establishes its validity; to doubt must resolve the doubt in favor of its constitutionality.

VIII.

Costs.

Though the taxes should be held to be illegal, yet the collector being merely a ministerial officer, whose warrant was regular on its face, he cannot be held liable for costs.

Drake v. Philips, 40 Ill., 388, cited by appellant in his second point.

IX.

The law establishes the presumption that assessors properly discharge their duty.

To overturn this presumption, a clear and strong case must be made out.

The presumption of law is, that officers perform their duty as prescribed by the revenue law.

Mix v. People, 81 Ill., 118.
Atkins v. Hinman, 2 Gilm., 450.

Jackson v. Cummings, 15 Ill., 451.

The law requires the assessor to assess all property at its true value, and it presumes he has performed his duty as required by the law and his oath.

State v Allen, 43 Ill., 460.
Durham v. People, 67 Ill., 416.
Taylor v People, 2 Gil., 351.
Job v. Tibbetts, 5 Gil., 376.
Sanderson v. La Salle, 57 Ill., 442.

X.

The demurrer should be sustained on the ground that complainant had its adequate remedy at law.

If the entire assessment should have been set aside in the town of South Chicago and a new one made, the County Board of Cook County, upon proper application of the appellant, would have granted such relief in accordance with statutory commands.

The statutes of Illinois provide that:

If the County Board of any county shall find the aggregate assessment of the county is too high or too low, or is generally so unequal as to render it impracticable to equalize such assessment fairly, they may set aside the assessment of the whole county, or of any township or townships therein, and order a new assessment, with instructions to the assessors to increase or diminish the aggregate assessment of such county or township, as the case may be, by such an amount as said Board may deem right and just in the premises and consistent with this act. R. S. Ills, Chap. 120, § 97.

No citation of authorities can be required to demonstrate the proposition that a party cannot sleep upon a legal right in order to create an equitable one.

Here the complainant cannot found its equity upon its own wrong. It had a duty to perform, for by its own action it could have cured all the evils of which it made complaint.

The parties in interest here are the bank and the public, and the assessor is a third party to both. Where two parties have equal rights, but one seeing an evil, suffers it to exist, he

shall not be allowed to come into chancery to found relief upon his own negligence.

If a party is aggrieved by an over-assessment, he should apply to the (Town) Board of Review to have it corrected, or to the July session of the (County) Board under the 97th section of the Revenue Law. Madison Co. v. Smith, 95 Ill., 335.

He could go before the assessor and make complaint, and then before the Board of Review, and failing to take advantage of two statutory remedies he has slept on his rights, and equity will grant no relief.

Such statutory remedies are far more consonant with the scope, principles and provisions of tax laws.

Cleghorn v. Postlewaite, 43 Ill., 428.
R. R. v. Livingston Co. 68 Ill., 458.

Statutory provisions similar to those of Illinois to correct errors in assessments held to be remedies "obvious, adequate and complete."

Arnold v. Middletown, 39 Conn., 401.
Clinton School Dist. Appeal 56 Penn. St. 315.
Howe v. Boston 7 Cush, 273.
O'Neal v. Va. and Md. Bridge Co., 18 Md. 1.

The following remedies at law have been held adequate and have been held to prevent equity from assuming jurisdiction. Mandamus to compel board to abate tax on U. S. stocks. People v. Otsego Co. 51 N. Y. 401. When courts had power to abate. Cocheco Man'f. Co. v. Stratford, 51 N. H, 455. Equity will not aid a tax-payer in default. Harrison v. Venis, 46 Tex. 15.

When a legal method of correction exists, a tax payer cannot loiter until it is too late to avail himself of it, and thus come into equity for relief. State v. Ins. Co. 19, La. An. 474. Equity holds tax payers seeking relief against assessments alleged to be excessive or erroneous to show that they have exercised strict diligence in availing themselves of every opportunity afforded by statute to correct such errors. Equity has no jurisdiction to correct or revise erroneous assessments. The proper forum being the Board of Supervisors in the time and manner provided by statute. Brooks v. Shelton, 47 Miss. 243.

And an *individual* seeking relief, on his own behalf, or on behalf of himself and others, must be able to show a personal grievance, distinct from those of the public at large, in order to give him a standing in court, and he cannot be allowed to complain merely that other property, alike subject to taxation has been omitted, in order to restrain taxes properly assessed upon him. Wells on Jurisdiction, 590.

Where a suit at law lies to recover illegal taxes paid, equity has no jurisdiction. McPike v. Peru, 48 Mo. 525.

Brewer v. Springfield, 97 Mass., 152.
Green v. Mumford, 5 R. I. 472.
Price v. Kramer, 4 Col., 546.

In Loud vs Charleston, 99 Mass, 208, Chapman, C. J., said in refusing relief:

"It has long been held in this commonwealth, that an action at law could be maintained against a city or town to recover back the amount collected by it upon an illegal assessment. * * The legislature has evidently regarded this remedy as adequate and complete, having regard to the necessity of a

'prompt and unembarrassed assessment and collection of taxes 'for the maintenance of the government.

'The court has full equity jurisdiction, according to the 'usage and practice of courts of equity, in certain enumerated 'cases, and in all other cases, where there is not a plain, ade-'quate and complete remedy at law."

Assumpsit lies in Illinois to recover an illegal tax paid under duress or protest.

Bradford v. Chicago, 25 Ill., 411.
Beckwith v. English, 51 Ill., 147.
Stephens n Co. v. Manny, 56 Ill., 16c.

Ordinarily, a party of whom a tax is illegally collected has an ample remedy at law, by an action of trespass against the officer collecting it, or by an action of assumpsit to recover back the money paid. Cook Co. v. R. R. 35 Ill., 467, and cases cited. In the case under consideration, if the tax was an illegal one, the appellee, after paying it, could have brought his action against the county and recovered the money back.

In the case of Munson v. Miner, 22 Ill., 594, it was held that a Court of Equity had no power to restrain the collection of a tax where irregularities and informalities had occurred in its assessment and levy. In McBride v. The City of Chicago, 22 Ill., 574, the same rule was announced. So in Metz v. Anderson, 23 Ill., 463, the relief sought was denied on the same ground. In O'Kane v. Treat, 25 Ill., 557, the question was not considered, but the relief sought was denied. In the City of Peoria v. Kidder, 26 Ill, 351, the Court held that an assessment for opening a street was so far in the nature of a tax that its collection would not be restrained for informalities or irregulari-

ties. While we consider it settled that a Court of Equity will never entertain a bill to restrain the collection of a tax, excepting in cases where the tax is unauthorized by law, or, where it is assessed upon property not subject to taxation, this Court has never held that it would take jurisdiction in such excepted cases without special circumstances showing that the collection of the tax would be likely to produce irreparable injury or cause a multiplicity of suits.

The court said in the same suit:

"It is a rule of uniform application, that when a party has 'a complete remedy at law, and having the opportunity, slum-'bers upon his right, and fails to insist upon it, a court of equity 'will not afford relief."

A court of equity will not interfere by injunction to restrain an entire tax, because in determining the aggregate value, certain exempt property is included as a factor, notwithstanding jurisdiction might be entertained to enjoin the collection of a tax wholly against exempt property—the error in such a case being considered a mere irregularity.

Huck v. R. R., 86 Ill., 360.

It is an old and well settled rule of equity that where there is a remedy at law as a general rule a court of chancery will not take jurisdiction.

Brown v. R. R., 96 Ill., 297.

Most if not all of the objections (against taxes) that can be urged in a court of equity, may be successfully interposed at law. And, there being a complete remedy at law, the defence

should be limited to that form, except in but few cases, and that to prevent great injustice and wrong.

Union Trust Co. v. Weber, 96 Ill., 358.

Where one is overrated by assessors, whether by including in the valuation property of which he is not the owner or that for which he is not liable to be taxed his only remedy is by an application for an abatement pursuant to the statute.

Osborn v. Danvers, 6 Pick, 98.
Gilpatrick v. Inhabitance of Saco, 57 Me., 277.
Stewart v. Maple, 70 Pa., St. 221.

The complainant scorns to ask any relief from the tribunals expressly provided to grant it by the State statutes It makes no complaint of defects in such remedies. The silence in the bill concerning such tribunals and remedies shows it negligently or wilfully refused to assert its rights when required by the law of the land to do so.

No matter what we might concede the equities of the bill to be under such circumstances no chancellor will inquire into it until the remedies at law have been exhausted or shown to be inadequate.

Equity as a fundamental principle demands that no injunction shall be granted in this case because there is an adequate and complete remedy at law.

Though it will be seen in our third point that we admit one sixtn of the entire tax to be void for want of jurisdiction in the County Board, yet the courts of law in Illinois give a plain, adequate and complete remedy, and therefore the demurrer in this case should be sustained, and complainant obtain its redress

for the admitted error in a suit in assumpsit. In the Illinois courts in Kimball v. Merchants' Saving Loan and Trust Co., 89, Ill., 611; the remedy was in fact by bill, to which demurrer was filed, but the jurisdiction of the former was expressly waived so that we have a right to insist upon the affirmance of the decree as to the whole tax.

XI.

ASSESSORS IN FIXING THE VALUE OF TAXABLE PROPERTY EXERCISE A POWER IN ITS NATURE PURELY JUDICIAL.

The record admits the fact that the assessor of the town of South Chicago, had jurisdiction to assess the property of this national bank. If we establish as we seek to do, that the power and action of the assessor is judicial; then it follows that the tax founded upon such assessment has all the force and vigor of a judicial sentence, importing absolute verity not impeached by an admission, that the assessor may have erred in his judgment in making such assessment.

The only error found when this identical assessment was presented to the Supreme Court of Illinois, was the want of jurisdiction in levying a tax upon the non-jurisdictional twenty per cent. personal property increase of South Chicago.

The law is well settled that assessors, in judging of the value of property, act judicially; and, although they may err and assess it too high, this of itself will give a Court of Equity no jurisdiction to interfere and restrain the collection of the tax.

People v. Halsey, 53 Barb, 548.
Genesee Bank v. Supervisors, Ib. 222.
Chegaray v. Jenkins v. 5 N. Y. 376.

Barhyte v. Shepherd, 35 N. Y., 238.
Swift v. Poughkeepsie, 37 N. Y. 511.
Clinton School Dist.'s Appeal, 56 Pa. St., 315.

Vail v. Owen, 19 Barb, 22.
Brown v. Smith, 24 Barb, 419.

Assessors are quasi judicial officers when acting within the sphere of their jurisdiction, and their assessments, when made, become judgments to be enforced by a warrant in the nature of a special execution. * * Their judgments can be reviewed by action for fraud, mistake or other cause giving jurisdiction to equity. R. R. v. Nolan, 48 N. Y., 513.

Weaver v. Devendorff, 3 Denio, 117.

An assessor is not responsible in a civil suit for a judicial determination in a matter over which he had jurisdiction, however erroneous it may be, or however wilful and corrupt the motive which produced it. Ib.

In R. R. v. Canaan, 16 Barb., 244, two railroad tracks of equal length, parallel and in the same town, were assessed, one at $300,000 and the other $40,000. Held, that the action of assessors. so long as they confine themselves within the statute rule, is conclus.ve, however grossly they may err in estimating the amount, and that the tax, based upon the assessment, is like a judicial sentence, and can only be assailed for fraud or want of jurisdiction. Harris, J., said: "Though it could be demonstrated that the assessors had erred, and that egregiously in their judgment, no tribunal has been endowed with power to correct such error. Like the verdict of a jury, if founded on correct principles, it must stand, however much its conclusions may surprise us."

their decision to some tribunal; therefore the laws of Illinois have provided a Board of Review.

This Board of Review consists of the assessor himself with whom are associated with equal power the supervisor and clerk of the township.

Although the jurisdiction of this assessor and of this Board of Review are limited yet within the boundaries of their power their jurisdiction can no more be assailed than the jurisdiction of this Court.

When the State Board of Equalization increased the valuation of personal property in a county 68 per cent., whereby a party who had given in his moneys which were assessed by the county assessors relatively too high, was required to pay on a valuation greatly in excess of its real value, it was held that a court of equity could not release him, as he had his remedy before the Board of Review in his township, and also before the Board of Supervisors, and not having availed of it he must bear the consequences.

Adsit v. Lieb, 76 Ill, 198.

It the officers provided by law for assessing property for taxation value certain property as a franchise at too great a sum, or more, in proportion to other property, in the absence of fraud, or want of power, the courts can afford no relief against the over-valuation.

Ottawa Glass Co. v. McCaleb, 81 Ill., 556.

Our law is, that all taxes shall be levied by valuation so that every person and corporation shall pay a tax in proportion to the value of his or its property, and such taxes shall be uni-

form in respect to persons and property within the jurisdiction of the body imposing the same. But exact uniformity, either in respect to persons or property is not attainable. An approximation to such a resnlt is all that can be expected. All property, were it possible, should be made to bear its just burden of taxation, but mere irregularities that may intervene, either in making valuation or in levying taxes, will not vitiate the tax, unless when it is apparent, such irregularities affect substantially the justness of the tax levied, or debars the citizen of some important right secured by law.

Law vs. People, 87 Ill., 418.

Nor is it any defense to say that taxes are high. The construction of municipal improvements almost everywhere on credit, and at high rates of interest, compels the imposition of heavy burthens to meet the cost, with current expenses. Such improvements are made with a lavishness almost amounting to recklessness. And yet the officers of such bodies are generally elected for the purpose, and the entire community urge them on, or at least favor their construction. None can expect to have all of the benefits derived from such improvements without being heavily burdened with taxes. To avoid them, economy should take the place of extravagance. The remedy is in the hands of the taxpayers. When they shall urge an economical administration of public affairs, and elect officers to carry out their views, then, and not till then, will the burthens of taxation be mitigated. The burthens are self-imposed, and fairness demands that the taxpayers should meet and discharge the duties as they do other honest obligations incurred in business. All take a pride in the improvements made by their municipalities, and enjoy their benefits, and they should not be heard to say that they are warranted in evading paying for the same,

or in imposing their portion of the burthens on others, in whole or in part. Stern justice demands that the creditors of the State, and of municipalities, teachers of schools, workmen in erecting school-houses, contractors who improve the streets and beautify and adorn our cities, villages and towns, should be paid for the money loaned and labor expended for these purposes.

Buck v. People, 78 Ill., 560.

If there be no constitutional restraint on the action of the legislature on this subject (taxation) there is no remedy except through the influence of a wise public sentiment reaching and controlling the conduct of the law-making power.

R. R. v. Reid, 13 Wall., 267.

The assessor is the officer who has been provided by the legislature for fixing the value of property for the purpose of taxation.

No appeal to any Court is provided from the assessor's judgment in fixing the value of property for taxation, nor has any express authority been conferred upon a Court to revise such valuation, or to correct such an assessment, or order a new one, or to make a rebate of any tax.

And we are of the opinion that the power does not belong to any Court to revise the assessment made by an assessor, and change or set aside any valuation of property made by him, when his judgment has been honestly exercised, and upon a right basis. To do so, would seem to be to arrogate the power of ascertaining the value of property for taxation, which ascertainment of value, the constitution declares, shall be by some person or persons, designated by the General Assembly, and not otherwise.

The legislature has provided a town board for the review of assessments in the matter of valuation, as follows:

The assessor, town clerk and supervisor shall attend at the time and place specified in the notice (before directed to be given) and on the application of any person conceiving himself aggrieved, they shall revise the assessment; and when the person so objecting thereto shall make an affidavit that the value of his personal estate does not exceed a certain sum specified in such affidavit, the assessor shall reduce the assessment to the sum specified in such affidavit. And if he, or any other one objects to the valuation put upon any of their real estate, the Board shall hear the objections, and may reduce the same if a majority of the Board may think it advisable, and in such case the assessor shall correct his list. Laws 1861, p. 242. This was the law in force at the time this assessment was made and the appellant should have applied to that Board for the correction of any over valuation of his property.

Spencer v. People, 68 Ill., 513.

Perfectly equal taxation will remain an unattainable good as long as laws and government and man are imperfect. If the laws demand equality, the constitutional provisions of uniformity are satisfied. None but dreamers have ever attempted to make all men equal by the force of legislative enactments. The wisest men now believe in the equality of all men before the law. Yet there is a wide gulf which separates and must ever separate the theory of laws for the practical development of such laws. It is a vexed and unsolved problem as to the method of imbuing the acts of man with the full force and spirit of thoughtful legislation. We satisfy the condition of all laws when in good faith we seek to carry their provisions into good effect. Here the

laws of Illinois are above complaint. The assessor elected under such law has carried out such law in exactly the way it has been executed since the law was in force. If this bill is sustained assessors must be abolished and State taxation attained through compliance with judicial legislation of this Court.

XIII.

An omission to tax property in Illinois will not defeat the assessment.

The provision of the constitution has respect to the laws which should be passed by the legislature for the imposition of taxes, and not to the practical working of the laws. The framers of the constitution could not have contemplated any such consequence, as that a tax levy should be void, in case an assessor should happen to omit to assess any taxable property, or should make an incorrect valuation of any property whereby would be produced the result that every person would not actually pay a tax in proportion to the value of his property. There is no objection made that the revenue law is not framed in accordance with the constitutional principle.

Spencer v. People, 68 Ill., 513.

The mode of creating taxes and of making the assessment and their collection are local affairs of each State which rest in the sound legislative discretion of the constitution-making and the law-making power of such States. As an incident and a part of such power, or at least its interpretation, come the decisions and their declaration of principles.

Now if we gather such principles and apply them to the

allegations of this bill it will appear that the question of omitted property cannot be urged as a defense to this tax.

An omission to assess some other persons liable to taxation or to assess a portion of the taxable property of others is an objection in principle like an under or over-valuation, the defect complained of being to cause the complaining taxpayer to bear an undue proportion of the burthen of taxation. Yet it has been uniformly held in Illinois that such an omission would not affect the validity of a tax.

Spencer v. People, 68 Ill., 513.
Merritt v. Farris, 22 Ill., 303
Dunham v. Chicago, 55 Ill., 357.

It is urged that the whole tax is void, because the assessor failed to list and assess personal property subject to taxation, and that the Court erred in excluding evidence offered and tending to sustain this position. That a statute, which, in terms or by necessary implication, authorized the omission of real or personal property in the city, so as to destroy the uniformity in respect to persons and property within the jurisdiction of the city, required by the fifth section of the ninth article of the constitution of 1848, would be void, there can be no doubt. But the position that it lies with ministerial officers to defeat the collection of taxes by such omission, whether made wilfully or from carelessness, is not tenable. Such officers may make themselves amenable to the law, for misconduct in office, but cannot thus stop the wheels of government.

Dunham et al. v. Chicago, citing Schofield v. Watkins, 22. Ill, 66.
Merritt v. Farris. Ibid, 303.

An omission of a tract of land will not defeat an application for judgment.

Chi. & N. W. R. R. v. People, 83 Ill., 467.
Elliott v. Chicago, 48 Ill., 293.

To sustain the position of appellant upon the ground of an over valuation, will in fact put the Federal Courts in the attitude of the assessors of property for State taxation. Such power and duty the State Courts cannot under the constitution of Illinois, assume, and for stronger reason we submit that, it is not within the jurisdiction of the Federal Courts to undertake the discharge of any such function.

The assessment not being void, and the bill not merely failing to offer to do equity, but insisting that "it ought not equitably to pay any sum as a condition of relief," this court in its sound equitable discretion without reference to the statutes and decisions of Illinois should refuse relief.

Great difficulty has always been experienced in arriving at just valuations of property for taxation, and, as yet, no great accuracy has ever been attained; but it has never been understood any inequality in that respect would vitiate the whole assessment. Should entire uniformity and accuracy in valuations of property for revenue purposes be exacted it would be impossible to collect either State or municipal taxes. Law v. People, 87 Ill., 407, citing Bureau Co. v. R. R., 44 Ill., 229; R. R. v. Boone Co., 44 Ill, 240.

In the most recent decision (The Union Trust Co. v. Webber, 96 Ill., 352), covering the whole subject matter of complaint urged in this bill the court used the following language, and cited the following authorities:

"The bill alleges, as a ground of relief, that the assessment 'was outrageously exorbitant, and was wholly unauthorized, 'and was fraudulently made against the road. This allegation 'seems to be a mere conclusion of the pleader. It is not stated 'in what the over-valuation consists. No facts or particulars 'are stated. Whether $1,000 more than the company considers 'a fair valuation is considered exorbitantly high is not stated.

'Again, as was held in the cases of the Republic Life Ins. 'Co. v. Pollak, 75 Ill., 292, and Ottawa Glass Co. v. McCabb, '81 Ill., 556, the courts have no power to revalue property for 'taxation. The power, by the provisions of the Constitution, is 'entrusted to other persons or officers.

'Nor has it ever been held that the mere charge of fraud in 'in a bill is sufficient to authorize a court to enjoin the collection 'of a tax. But it has been held by this court that an as-'sessment higher than would be fixed by it will not be held to 'establish fraud on the part of the Board of Equalization. And 'in the case of Adsit v. Lieb, 76 Ill., 197, relief was refused 'where the valuation was manifestly and largely too great.

'We, from the allegations of the bill, are unable to perceive 'any facts that prove fraud on the part of the board, or any-'thing tending to prove it. In a number of cases the action of 'this same session of the Board has been challenged, but in 'every case we have, on similar allegations, sustained its acts, 'nor do we now perceive any reason to hold otherwise.

'In the case of Pacific Hotel Co. v. Lieb, 83 Ill., 602, it was 'held that the fact that the shares of stock of an incorporation are worthless will not impeach the assessment, as that may be 'in consequence of its debts. A corporation might be as largely 'involved as to render the shares of its stock of no valne, and

'yet have large sums of money owing to it subject to taxation."

R. R. v. Lincoln Co., 2 Dil., C. C. Rep., 279, was a bill for an injunction because seventy miles of R. R. had been omitted from the assessment. Dillion, J, in refusing relief said:

"Courts of equity and particularly the Federal Courts sit-'ting in equity in the states will exercise great caution in inter-'fering with the collection of revenues by the states or their pub-'lic or municipal agencies. There must be a plain case of in-'jury and a plain case of equitable jurisdiction and want of ade-'quate remedy at law to justify the chancellor in arresting by in-'junction the ordinary processes of collection under the revenue 'laws."

The powers of the chancellor to restrain the collection of the revenue is one that should never be exercised but in cases where the tax is levied on property exempt from taxation; when it is doubly taxed; where it is levied without any warrant of law by persons having no power to make the levy, or where a clear case of fraud in making the valuation of the property is shown. But in the latter case the proof must be clear and irresistible, and the injury likely to be produced considerable. It is so eminently just and equitable that every person or corporation receiving protection from the government should each contribute his or its fair and just proportion to its support, that a court of chancery should never interpose except to prevent great wrong and injustice. Mere technical objections, or even *legal omissions in assessing property* or the collection of the tax, usually, do not affect in the slightest degree this strong equitable obligation. If many of the requirements of the law, even those that are important, should be omitted, still the strong equitable duty to pay a tax on property remains. When it escapes the burden

is unjustly and inequitably imposed on others to the extent that property is relieved from its just burthen.

Union Trust Co. v. Weber, 96 Ill., 357.

XIV.

Equity has no jurisdiction on the ground of a multiplicity of suits.

In Dowe v. Chicago, 11 Wal. 108, Field J. said: "Assuming the tax to be illegal and void, we do not think any ground 'is presented by the bill justifying the interposition of a court 'of equity to enjoin its collection.

'The party of whom an illegal tax is collected has ordinarily ample remedy, either by action against the officer making the collection or the body to whom the tax is paid.

'No imparable injury would have followed to him from its 'collection. Nor would he have been compelled to resort to a 'multiplicity of suits to determine his rights. His entire claim 'might have been embraced in a single action."

In the case at bar as the statute of Illinois required, the payment of the tax by the bank, so the bank could maintain its suit at law, to recover any illegal or void tax assessed against its shares.

XV.

An assessment upon valuation as required by the constitution has been defined by judicial decisions in Illinois to mean equality and uniformity.

An illustration of the principles can be found in all those

numerous decisions, which grant relief to individuals because their assessment is greater than that of other persons and property. Practically this sort of relief consists in a correction by levelling down and not levelling up the inequality of the assessment.

This principle has long been an established doctrine in Illinois.

Breese J. Bureau Co. v. R. R., 44 Ill. 229, used the following language, "the great central and dominant idea in that instrument (the constitution), is uniformity of taxation; and no power exists or should exist in any corporate authority, to go counter to this command of the fundamental law. A mode has been furnished by law by which this uniformity shall be attained; and that is, that property shall be assessed at its actual value, and the rate of taxation placed upon it shall be the same, regardless of persons or ownership. Persons are elected to ascertain this value, and the rate is prescribed.

The question is before us in all its length and breadth: Can a railroad company, by any action of the corporate authorities of a county, be required to pay more than its fair share of taxes as compared with those paid by individuals? Does the power exist any where to destroy the cardinal principle of uniformity of taxation so forcibly and prominently insisted upon by the constitution? This is a great question, affecting, not only railroad corporations, but every property owner and taxpayer in the State.

It seems to us there is something so monstrous in this proposition as to be indefensible by fair argument.

Regarding uniformity as the vital principle, the dominant

idea of the constitution, where can the power reside to produce its opposite? Where is the power lodged, in view of this principle, to compel A to pay, on his land or personal property, of no more value than the same kind of property belonging to B, forty per cent. more taxes than are assessed against B? We affirm such a power nowhere exists, and if it did, it would be so revolting in its exercise to the lowest sense of justice with which our species is imbued as to justify any and every lawful expedient for relief against it.

The framers of our constitution and our law makers, to their credit be it said, have kept steadily in view the principles of equality and justice, in adopting a system of taxation which commends itself to the favor and approbation of all well organized minds.

(Assessments are always made at a lower rate than the cash value in making an assessment by valuation in Illinois.)

The rule adopted by the assessors in this State has grown into a custom, and has been tacitly sanctioned by every department of the government for a long course of years, and it is now too late to challenge it. Even so late as the last special session of the legislature that body, by clear implication, acknowledged the custom and yielded to its influence, by the provisions of the act to tax the shares in national banks. They therein impliedly declare that such shares are to be taxed the same as other property. A share of bank stock, under that bill, is not required to pay more State or local taxes than a piece of land or a house of equal value; and the plain inference is, if such property be assessed on only one-third of its actual value, bank stock shall be assessed on the same per cent. of its actual value. Would not the sense of justice of every man in this community

be outraged by allowing this or any other deprivation to one class of people, and demanding of another a higher tax on a similar article of the same actual value? The proposition cannot commend itself to the favor of any just man, and can receive no countenance in a court of justice.

It is an admitted fact on both sides to this controversy that the property of no one owner in the county of Bureau has been taxed on its real value, and that the per cent. added by the Board of Supervisors to the valuation of the property of appellees imposes upon them a greater proportionate burden than the law requires them to bear. We are of this opinion, and therefore consider the action of the board unfounded in justice and in direct opposition to the Constitution. The great and attractive feature of uniformity has been disregarded by the Board, and appellees victimized. It may be very desirable that the greatest share of the public burdens shall be borne by these corporations, but until there be a radical change in our fundamental law it cannot be done. They stand on the platform of equality before the law, and no greater burden for the support of the government can be imposed upon them than can be placed upon the individual tax-payer."

This and kindred decisions in Illinois has ever been declared to be the law. "Equality and uniformity are reached when the departures from cash value by the assessors in ascertaining the valuation are equal and uniform." If these decisions have become a part of the construction of our present revenue law, then we need not go beyond them to show this bill create no evil requiring a remedy, and it shows that § 5219 U. S. R. S was drafted in harmony with such decisions.

State Railroad Tax Cases, 2 Otto, 575, upheld the system in Illinois of having the State Board of Equalization assess railroads and then distribute the tax to the counties, towns, etc, in proportion to the length of miles of track in such counties, towns, etc., and held that the constitutional requirements of a tax by valuation was met by such an assessment.

XVI.

The decisions of the Supreme Court of a State as to the proper constitution of its revenue laws constitute rules of decision in the Federal Courts.

Tappan v. Merchants' Nat. Bk., 19 Wal., 504.

"It is not the province of this court to interfere with the revenue laws of the states nor with the interpretation given them by their courts.

Witherspoon v. Duncan, 4 Wal., 210.

We need not multiply authorities on a point which no member of this court will question.

This complainant has the same right under the laws and constitution of Illinois to be protected against unjust taxation as any citizen of the State. By virtue of the act of Congress under which the bank was organized it can go into the United States Courts to assert its rights, but such rights and the jurisdiction of the United States Courts to cure the evils of taxation must be confined to the rights to relief that citizens of Illinois have under the local statutes and constitution which alone create and control taxation in Illinois.

This same assessment has been sustained except as to one

sixth, which failed for want of jurisdiction as shown in this brief on p. 19 to recover which appellant should bring assumpsit, and it follows from this principle that the United States Courts will follow the State Courts in construing their own revenue laws and affirm the decree.

Respectfully submitted,

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Appellee's Attorney and County Attorney of Cook County, Ill.